SUZANNAH LESSARD ON
THE FOLDING OF FRED HARRIS

The Washington Monthly

JANUARY 1972/ONE DOLLAR

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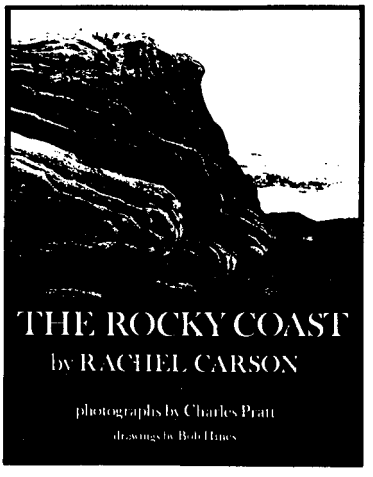

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The Folding of Fred Harris

by Suzannah Lessard

When the tapestry of American political history is finally hung on the wall, the birth and death of Fred Harris' candidacy for the Democratic nomination of '72 will be a microscopic detail. Some weavers, like *Time*, would pull the stitches out altogether: "Harris' withdrawal will have little effect on the remaining Democratic hopefuls, other than to reduce the crowding in the field." Others have seen in the subplot material for a terse and poignant parable on the evils of competitive campaign spending and dependence of politicians on the rich for support. Generally the focus is clearest on the financial aspect, which ironically brought Harris more notice, headlines, network exposure, and outpourings of sympathy than anything else he did or said during the campaign. Since that sort of attention is a key ingredient for attracting the money he didn't get, this sudden interest in spilt milk is a galling twist, particularly when so many of those now expressing anguish contributed to the debacle by suavely dismissing Harris as a credible candidate.

Though Harris identified finances as the main reason for his withdrawal, and while that in itself is a cruel and central commentary on the democratic process, there is more to be said about this tale than that a poor man is licked from the start. The brief history is a cameo in which more general themes come into focus, and values often muddied and obscured in the larger picture are clarified.

For many, Fred Harris first came into focus out of nowhere, a man without a history, attracting interest not with a well-known name or a flashy image, but with an aggressive platform that put him, unchallenged, at the progressive end of the spectrum of Democratic candidates. Behind the platform was an intense personality, a man who had come from the obscurity of an Oklahoma dirt farm to the United States Senate at age 34, and at 40 had not lost a sense of straining against the world, of busting out. A small, folksy person with poker-straight black hair, he projects an indomitable energy and gusty warmth, beneath which lie formidable cerebral

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powers and self-reliance to the point of wilfulness. Harris has served on the Kerner Commission, was the instigator of the convention reforms as Chairman of the Democratic Party, and was co-chairman of the Urban Coalition Commission on the Cities.

Harris was running not—as *Life* has said of Muskie—on his good character, or on style, or on tasteful ambiguity, but strictly and unequivocally on issues: breaking up the monopolies, drastically redistributing income through stringent tax reform, establishing a guaranteed minimum income of $3,600 and a national health care program, and fundamentally revising the principles of American foreign policy. He was the only candidate willing to take on race as a major issue, challenging white suburban audiences with his views on that hot potato of a subject, busing. And in a time when the fervor once surrounding issues of civil rights has gone ominously slack, Harris courageously restates those values and the essential importance of implementing them. An eloquent, often stirring speaker, he presented his propositions as dictated not by pious considerations, but by common sense and the manifest, but hitherto violated, interest of the ordinary person. His theory that a new coalition of disenfranchised minorities and the generally short-changed middle classes would respond to his platform was substantiated by the enthusiastic response of quite varied crowds: blacks, Chicanos, and Indians number among his most avid supporters, initially skeptical student audiences gave him standing ovations, and he did extremely well at several state AFL-CIO conventions. While hardly riding a tidal wave of acclaim, the potential for a groundswell of support was clear. He called himself a new (meaning non-racist) populist.

The editorial post-mortems that smugly claimed Harris' withdrawal was without significance for my money missed the point. While no huge constituency was released, Harris, like Hughes before him, and unlike any of the other candidates, offered the possibility of creating a new constituency by uniting the disparate factions into a new Democratic majority. Secondly, the range and nature of the issues he raised, unique in the field, meant that no matter how

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slim his chances at that early point, there was something to work with, at the very least a counterpoint from which those ideas could gain real leverage in an otherwise mushy, uninspiring scene.

The hope invested in the Harris effort was not just that it might finally succeed—the chances were undeniably small—but that its very existence could change the picture by directing the Democratic focus away from palliatives and towards the critical issues which also happen to be the common concern of that latent constituency. This is why, unlike the editorialists, people close to the campaign were stunned and horrified when Harris abruptly withdrew. "I'm broke," he said, and later, "Sometimes the train just grinds to a halt."

Logical Developments

The financial situation was undeniably serious. The campaign was $40,000 in debt, credit cards had been cut off, a large sum in unpaid taxes on staff salaries was owed to the Internal Revenue Service, fundraising had been chillingly unsuccessful, and no more money was forthcoming from the big backers. Meanwhile the polls and pundits had continued to give the effort low ratings. But while no one denied that expenditures would have to be drastically cut—in fact, plans were afoot to switch to a truly populist style, a technique many staffers thought would be more effective anyway—the underlying feeling prevailed among people close to the campaign that a $40,000 debt was not a sufficient reason to pack up altogether. The sense that the campaign had been on the upswing, combined with the understanding of commitment, made the withdrawal bewildering, like a plot development in total conflict with the nature of the characters. While there was no question that money problems had blown the campaign out of the water, there were a lot of questions about why money problems had had this sudden, fatal effect; about why, in the face of cutting back and weathering a difficult passage, the center had not held.

If only because we demand that our plays be consistent, it's hard to let baffling events, especially those that involve disappointment, go unsolved. When you look closely at this one for a while, the underlying dynamics slowly emerge and what originally seemed inexplicable turns out to have been prophesied from the start. Harris' aborted foray reminds me of Sam Patch in William Carlos Williams' *Paterson*. Patch was a troublesome citizen, given, among other things, to threatening to jump from the rocks, down the falls. One day when a crowd was gathered for the rigging of a foot bridge, he jumped, plummeting perfectly into the river below, retrieving a wooden roller. "There's no mistake in Sam Patch." He then took to traveling around the West jumping, working up to the grandest jump of all, into the Genesee River. People traveled far to watch and before he jumped he made a short speech to the crowd, as was his habit. But there was something just a little wrong about the speech, and instead of falling straight down, his body wavered in the air. "Speech had failed him. He was confused. The word had been drained of its meaning. There's no mistake in Sam Patch. He struck the water on his side and disappeared."

There are a number of things just a little off in the way Fred Harris jumped, too, indications that he didn't feel all there, certain of what he was about as he took off. In other men and other campaigns inner soundness wouldn't have made a smidgen of difference, but like Sam Patch, there's no mistake in Fred Harris. At a slower pace, or perhaps with the supportive presence of ample funds, the sense of wrongness would simply have driven him to correct it. But under the speed and pressure of the campaign which was in itself a process of expansion and development, and in the absence of any security, save inner security, those uncertainties at the inception

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were destined to become magnified into fatal flaws.

The most tangible prophecy of the debacle is that Harris did not come to the decision fully on his own to run. He had thought about it for a long time and then concluded that '72 was not the time and embarked on an uphill campaign for reelection to the Senate. Then one day two friends, Jack Vaughn and Herb Allen, came to him and convinced him he should do it. Vaughn promised to give up his job as head of the Urban Coalition and take on the management of the campaign, and Allen, an immensely wealthy investment banker, promised limited, but substantial, support to get the campaign going. I doubt that anyone needed to persuade John Kennedy or Richard Nixon to run; the apparent absence of a certain, inner-directed, thoroughly-arrived-at decision indicates something askew right there. The resolve had to be absolutely in tact—especially for someone like Fred Harris, unarmed with fame or money—if the inevitable shock of meeting with the obstacles was not to shatter the will to go on.

The cozy world of Capitol Hill, where a politician is known and all the vagaries and struggles are familiar to him is the perfect laboratory for the culture of overblown visions. One gets the impression that Harris didn't fully realize that his campaign would have to be as maverick as it was, and hence didn't foresee the consequences of being a maverick. The cold blast of indifference, scorn, and outright antagonism Harris met with beyond the protective confines of the Hill shouldn't have been as much of a surprise and a blow as it seems to have been.

Stagefright

A second weakness was irremediable and like most of these infirmities, not in itself fatal. Harris is a growing, changing person by nature, the sort of person who would solidify if he stayed still, and sink like a stone. As Jim Hightower wrote recently in *The New Democrat*, "As with Bobby Kennedy, the Harris question was not 'who has he been,' but rather, 'who could he be?' " He had come to many of his ideas by instinct and in several cases the substance was not developed. That didn't really matter, as the direction was the important thing, and the energy with which he pursued it. But the thinness showed up occasionally and when it did, he would falter badly. On Bill Buckley's "Firing Line," for instance, Buckley attacked him on a number of points, one of them that labor unions have contributed their share to monopoly-building and what did he intend to do about that. This is an area Harris hasn't worked out satisfactorily, which is in itself all right; but when confronted with it, he wasn't able to roll with the punches and candidly acknowledge the problem. He got wooden and stuffy, denied it until backed to the wall, and seemed ill-at-ease in a way that seriously undermined one's confidence in him. Again, on "Meet the Press," confronted with sophisticated, but not especially thorny questions, he got up-tight, and instead of answering deftly and exactly, threw out canned formulas, not always well-tailored to the queries. Part of this was a problem with television which a little practice could have solved: self-consciousness seemed to grip him like a straight-jacket. But the performances also betrayed, I thought, a worrisome insecurity, of which, after all, self-consciousness is a symptom. Thinking back on those episodes after the withdrawal, they seemed a rather important piece in the puzzle, indicating again that Harris' faith in himself wasn't as sound as it should have been. Since on other occasions he managed splendidly with equally sophisticated antagonists—such as J.K. Galbraith, with whom he debated the usefulness of trust-busting—the problem seems to have been an up and down affair. Nevertheless, if your whole life has been a series of experiences, clicking in and leading up

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to this consummate effort, and then someone asks you the question and you can't answer it spontaneously, then you would have to be vain indeed not to be shaken.

Two Unlikely Models

The third motif, though located strictly in Harris himself, is most readily perceived in the kinds of people he drew into the campaign. Without implying that things were black and white, there were two factions in the Harris staff—the old trusties from Oklahoma days, pros, given to caution, there because of loyalty to Harris, whatever he might do; and the young idealists, recently acquired, longer on dedication than experience, and there because they were committed to Harris' ideas. The young faction was impatient and uncomfortable with conventional campaigning from the beginning and eager to switch from limousines to public buses, from Democratic Club receptions to the street, from banquet halls to factory lunch rooms. They wanted to do this not to save money but because they thought the style would be not only more compatible with the platform, but more effective in building grass-roots recognition and drawing press interest. The older faction predictably thought most of these notions were crackpot and amateur and, as they seem to have had control of the scheduling, quietly went on setting up the receptions and arranging for the limos. Harris wavers in the middle. On one level, this is simply a question of strategy and to say one was right and the other wrong is no more than Monday-morning quarterbacking.

The argument for going the conventional route was that Harris had to establish himself as a credible candidate and the way to show he was serious was to travel around the country doing all the things that credible candidates do. Behind this was the idea, not to be discredited, that if you

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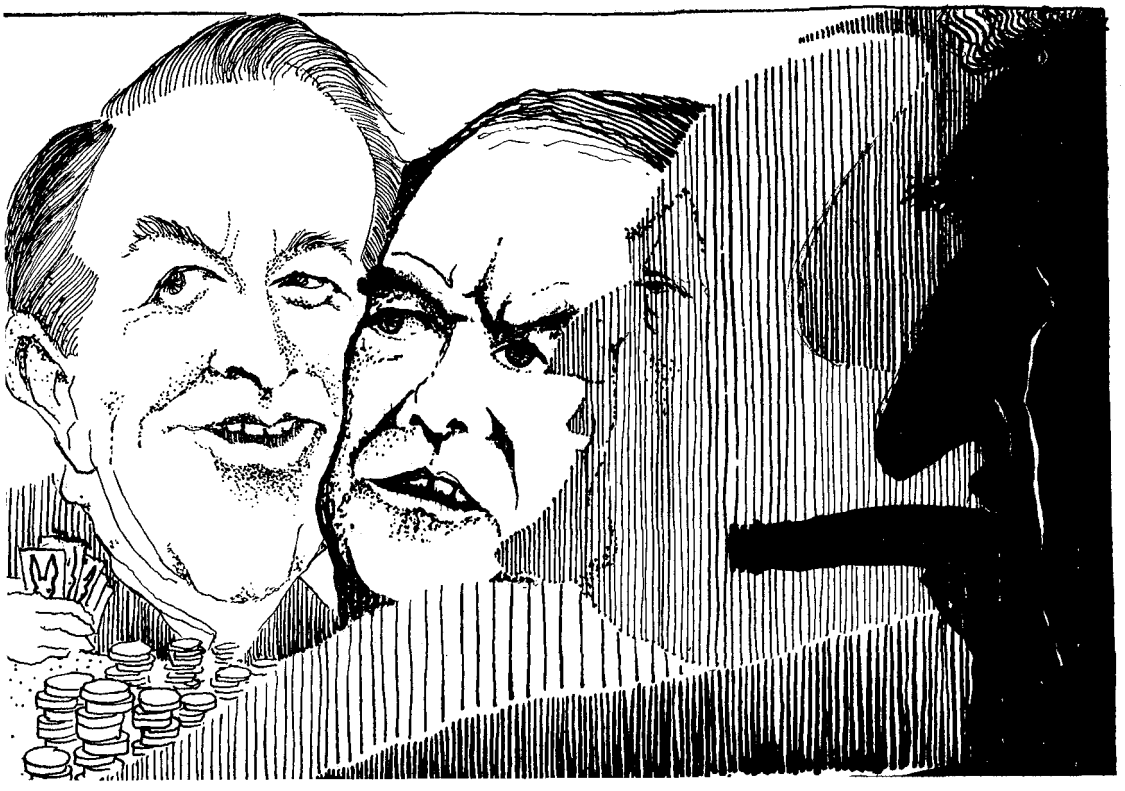
spend a lot of money in a way that suggests there's a lot more coming, if you act like you're a big cheese, then people will believe the act, making you de facto, a big cheese, someone to put money on. Whether it was practical or not in this case, there is nothing essentially wrong with this kind of con; the best causes would never get off the ground if their advocates weren't willing to play the Flim-Flam Man, able, with nothing to support them but something in their heads, to swell out their chests, smile the warm confident smile of a winner, and say "step right up."

Flim-flam confidence—slightly different kinds—would have to be employed at both the factory lunch and the champagne dinner. If anything, the factory where he would be an unrecognized face would require greater elan. The issue here is not really the comparative "worthiness" or "appropriateness" of either style, but that Harris seems not to have successfully distinguished between the con and reality, between people's belief in his credibility and his own belief in it. In other words, one gets the sense that he depended in some ways on his own con, so that when it looked like the props set up to lure others were falling apart, he fell apart. When the press didn't hail him as an important candidate and the rich didn't put money on him as a worthy cause and likely prospect, he doubted his own importance, worthiness and validity. The success of the Flim-Flam Man was that he never allowed his resolve to be affected by the state of his hustle and hence was able to keep going in the face of total disintegration of appearances—when the stolen car he was driving, having crashed into inumerable police vehicles, hood flapping, exploded every two feet on the raucous passage through the cornfield, he kept his composure, in no way allowing the chaos to compromise his credibility to himself, nor, certainly, to deter him. Richard Nixon rivals the Flim-Flam Man for defying the laws



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of appearances. The fact that after repeated exposure not only as a dismal failure, but as a complete fool, Nixon was not in the least daunted by what should have been a crushing sense of the ridiculousness of his running for President, makes him worthy of the highest medal of flimflam—or perseverance. It's a quality that has been sadly lacking on, to put it bluntly, our side.

Getting It Backwards

The division within the staff, echoing that in Harris himself, caused a rather schizoid presentation which possibly caused the failure of the strategy. The height of the blue chip con was the charter of a DC-9 for a red carpet trip all over the country for members of the national press to a series of events most of which, far from grass-roots populist, couldn't have been more Grade A campaign honky-tonk. Yet as the booze flowed and the staff, just a little too obviously, scrambled to make sure that luggage got to the right place, cars were on time, and all the other qualities of a smooth, luxe, competent organization, were plainly in evidence, the members of the press party were thoroughly catechized in the rather contradictory dogma that the Harris campaign was not your ordinary slick hustle, but founded on the fervor of dedicated amateurs and the certitude that the people were sick of fancy hoopla and ready to listen to a poor man stand up with just plain folks and talk to them honestly about what worries them. The performance wasn't disturbing because it seemed dishonest, but because it was just bad flimflam, leaving one with the impression that the campaign incorporated the worst of both worlds—inexperience and shallow, tinselly tactics.

Though the young faction, to their credit, never betrayed a glimmer of discomfort with this contradiction, they were in fact pressing hard to bring the campaign down to earth. Harris seems to have met their ideas with interest and hesitation. Recalling those discussions, one staffer said that Harris' resistance was often expressed as a fear that he might appear to be grandstanding, or look self-serving, and secondly, in such concerns as if only a dozen or so people gathered around, as was likely since he was not well known, he would look like a hopeless case. The other side of this coin is that by his own admission he felt far more comfortable on the subway than in a chauffeur-driven Cadillac. On the few occasions that he did go to the streets, he felt he was in his natural medium. There's a double whammy here: while he thought the only way to make people believe in him was to act like something he was not, he also thought that if he played the role he felt most comfortable with, the part closest to this message, he would look phony, self-serving, flimsy.

In all fairness, this theory wasn't without reason. Harris with his Southern accent, tendency dowards dramatic oratory, and folksy routines, was in real danger of coming off as a crackpot, know-nothing populist. A spectre of George Wallace flitting around the campaign could not have been easily exorcised, and it's only with the advantage of hindsight that one can confidently say that Harris had it exactly backwards. His credibility to people like myself came through in spite of the gimcrack trappings, in spite of the soporific vacuity of the more conventional events. It came through because of what he was saying, the consistency with which he said it, regardless of the bias of particular audiences, and the way he said it. Without question his most powerful appearances were before audiences which were not invited or given drinks while they listened—the far less polite come-who-may group sessions, where in the rough and tumble of unsugared questions he would lose all self-consciousness and let the substance of what he was about take over. On those occasions it wouldn't have mattered if he'd worn a saucepan on his

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head. I am also positive that those were the occasions where he won real support. In a way, the bad combination of gimcrackery and his natural, robust style conjured up the image of a phony Wallace far more readily than the plain, uncosmetic presentation would have.

Admittedly I am a rather small constituency, but people who were going to go for the substance—as opposed to the props—were always his most likely constituency. The others, the pros and savants, the hacks and power brokers, were certain not to be magnetically attracted to him, so that to court them and then be shaken when they didn't come through, was to reveal at that early stage, a misconception of his real strength and a split in his purpose. This wavering, this hesitancy to follow his instinct, betrays that slight wrongness one finds in other facets of the campaign.

The wrongness is not just the misconception of the nature of his candidacy suggested in the choice of the conventional strategy, but in the dependence on props suggested by his resistance to the other strategy. By the time he withdrew he had come around to seeing the strategical wrongness and had scheduled for the next few weeks a series of highly original events. But even if I'm right in believing that the populist style would have been much more effective in the purely strategic sense of attracting press coverage and a credible image, as long as Harris was unable to sever his faith in his mission from considerations of appearance, as long as finding out on one occasion or another that he had looked foolish made him quail inside, then the populist technique wouldn't have worked any better than the other. Taking stock of one's success, rejecting techniques that produce poor results and so forth is an entirely different matter, clearly essential if one is to run a successful campaign. My impression is that Harris muddled the two, didn't have the essential confidence that even if he was a total flop, it had no bearing on the essential worthiness of what he was doing. He seemed to take personally predictable rejection, and even the failure of particular hurdles. Doing so, I think, among other things, exhausted him so that when faced with the prospect of having to bash through in a bashed up vehicle, he simply didn't have the stamina to face it. An absence of inner sureness, worrying about your costume as you leap for the trapeze, will badly jeopardize the connection. As in the Stanislavski theory of acting, the minute you worry about how you look to your audience, you've blown it.

Diffrent Genres

Most campaigns consist largely of appearances; most campaigners judge their credibility almost entirely by the reflection of themselves in the eyes of the world and carefully tailor themselves to improve it. In dissecting Harris' dependence on appearances, one might give the impression that he was unusually enslaved, but that would be misleading. If his faith somehow faltered, if his eye wandered from the ball to less central concerns causing the fatality, that is not becuase he was less steady than other men, but engaging in an endeavor so different from the ordinary that ordinary standards don't even apply. If you're running for no clear principle, then appearances are of maximum importance, for there is little else; then there is no way you can distinguish between how you look and what you are about, because there is none, except in the Nixonesque sense of personal ambition. Conversely, if you are running on principles, and especially if from out of nowhere, then your concentration must be unwavering and your assurance self-sufficient —demands which may not even apply to other contenders. This problem was not clear to me or anyone else while the campaign was in motion: it is discovered here with the advantage of hindsight. Sadly, it seems that Harris was groping towards that discovery

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himself before the financial bombshell blew the campaign apart. The lesson is that had it been discovered earlier, the financial bombshell need not have blown it apart, not just because the populist campaign would have been cheaper, but because the combination of strains which wore Harris down, making it appear impossible to go on, would have been considerably lighter.

Double Takes

Just living in Washington, it is easy to forget how circumscribed and illusory the world of conventional politics is—an Evans and Novak column conveying a bit of rank gossip appears to make waves; you believe a Mansfield amendment is going to have a real effect and perceive the Pentagon Papers as an atom bomb which is going to explode a destructive foreign policy. Being a politician must add considerably to the hallucinatory powers of the magic glasses. The soothingly unreal world of ritual and importance puts a balm on whatever raw information that real people out there are cheated, or angry, or dying might penetrate the decorous atmosphere.

Fred Harris tried to break through that phantasmagoria to daylight, where real people live, to name what was of real import. He was like flesh and blood battling out of the flickering world of a movie screen, but not quite able to leave behind the technicolor, cinemascope, and stereophonic sound. That was partly because he didn't clearly perceive what he was doing; didn't lucidly foresee and accept beforehand the consequences of being a maverick, blinded possibly by the delusions so easily cultivated in the Washington greenhouse. The fumble was caused, too, by that uncontrollable factor, the intersection in time on an individual's graph of potential and weakness, assurance and terror. One tends to forget in the greenhouse that history is made up of those intersections.

The Harris casualty has probably gratified many habitues of the political wonderland and reinforced their peculiar form of "realism." T. N. Bethell recently wrote an angry letter to *The Washington Post* asking them what possible rationale allowed them to give Scoop Jackson a blazing front-page spread in the "Outlook" section the Sunday after he announced, when they had hardly given Harris a nod of recognition. Came back the self-congratulatory reply from Ben Bradlee, Executive Editor: "We have planned these candidate interviews to get over the problem you describe, namely the making of a candidate by the press . . . . We left Harris out because, in the opinion of our experts, he never was anything but a non-starter, although we would have done him had he stayed the course through at least one primary." (The *Post* did not print Bethell's letter to the editor.)

Harris met with the editorial board of the *Post* during his candidacy, and of all the newspaper boards with whom he talked, including *The New York Times*, the *Post* people were distinguished for their unconcealed hostility to his platform. So perhaps evaluation of his "chances" was not the only governing factor in their policy towards him. But some others who enthusiastically embraced the ideas also systematically dismissed him on the grounds of "chances." Tom Wicker wrote a warmly favorable column, and then a few weeks later, commenting on the general Democratic scene, briefly dismissed Harris as a nice guy but a hopeless cause. David Broder, who angrily mourned the disappearnce of the Harris issues from the field, had earlier written a column in which, again briefly, Harris was dismissed as a serious candidate, this time in comparison to Lindsay. In view of his subsequent column he obviously meant less serious in terms of chances, not substance, but it would seem to me that to any "serious" commentator in this stage of an unpredictable game, "chances" ought to be the least interesting aspect of any candidacy, particularly when the

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candidacy raises issues considered vital by the writer, particularly when the act of dismissing chances with the stroke of the pen helps diminish them. The insidious system which guarantees us, in Broder's words, "literally the best government money can buy," is not just that which forces candidates to depend on big money. A press unwilling to take the risk of hailing someone who doesn't have big bucks, and hence less of a chance, is equally deserving of indictment.

Gospel According to Wallace

The jaded worldliness of newspapermen who, having seen it all, see in the most hopeful, energetic endeavor the irony of ever trying to change anything is a genuine perspective. One can't expect the profession to produce raving idealists. Perhaps in a way, too, a lack of the humor and tolerance that comes with the perspective was one of the faults in the Harris campaign; not being able to laugh at yourself as you mount your nag and charge the world, but grimly worrying about the figure you cut to the crowd and whether they've noticed your nag's weak ankles, is no help in bringing the charge home. But if it's absurd to think you can change things, it's even more absurd to think that it's foolish and unimportant to try. Without that ultimate faith, the world would be a far worse place.

At the bottom of the uncertainty that threw the Harris campaign off was a confusion about the function of that ultimate faith in the presidential horse show: whether your main objective is to win the '72 election, in the sense that deprived of this objective your efforts are meaningless, or whether running for President on a particular platform has value in itself as a step toward building a movement, articulating and focusing the concerns of a constituency, and instigating the beginning of something that would by its existence change the nature of the race. An awareness of the latter value was definitely part of the campaign. But when he faced survival only as a candidate who could not conceive of his goals primarily in terms of the '72 blue ribbon, he couldn't sustain the will to go on. Ironically, in the shock of emptiness felt when Harris withdrew—the realization that those issues, ideas, and interests were out of the picture altogether with no one around who was likely to pick up the flag—in that blank, the real value of his candidacy came home with certainty and clarity, I think, to Harris as well as his supporters, for the first time.

The natural self-image of the Harris campaign was not as a conventional entry, but neither was it as a symbolic gesture. If Harris could have learned something from Richard Nixon, George Wallace also might have provided a useful model. Wallace (who currently holds much support that Harris might have won) achieved a bifocal perception of goals which definitely focused on the presidency—thus spurring his effort to its utmost—but also saw the value of building a movement around the push. There was never any question in his or his supporters' minds that the smallness of the chance to win reflected on the validity of the endeavor. On the other hand, there was no question either that he was serious in his aspirations, no danger that if all of a sudden the campaign took off into the big time, he would have to drastically revise his idea of what he was about. Short of total victory, he knew he would get a lot of votes, and, as he said, his people would be around and would have to be reckoned with. And they were. Free of the obsession with the paramount importance of winning the next election, the Harris campaign, rich or poor, could have maintained its uncompromising character without suffering internal deflation upon comparing its status to others, and also kept its sights on the finish line and the range of issues, keen motivation, and perspective that incentive creates. The issues are there, now unspoken for, and so are the people. Harris just didn't find them, or himself, in time.

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Memo of the Month

HIGHWAY USERS FEDERATION FOR SAFETY AND MOBILITY

INTER-OFFICE MEMORANDUM

To Mr. Allen cc: Mr. Longerbeam Date June 17, 1971
7:45 a.m.

From M. Maness

Subject TODAY PROGRAM - does it again!

I won't go into the detail of all he said, but a guy name Ben Kelly, author of another anti-highway book "The Paved and the Pavers" really got his licks in this morning.

All the acres being paved over, the people displaced, need for rail mass transit, lack of safety, neglect of rural roads and areas, pollution, the poor suffer, the rich don't, inefficient and poor method of transportation --- he didn't miss a trick!

A hell of a lot of people — especially nincompoop housewives — will have seen this thing this morning and get all hot and bothered about the pollution, misuse of their taxes - blah blah blah. The dear ladies (?) of the League of Women Voters, Sandy Arnold, Phil Milstein and a bunch of other nuts out here just got a fresh load of powder for their guns. They are the ones who get heard on the TV and that the Denver Post prints up.

It makes a long fight with a short stick.

I understood them to say this guy Kelly was a former Federal Highway Administration man.

Trucks were prominently mentioned and American Trucking Assn., both I thought in a derogatory way.

I hope somebody comes up with some equal time to make a response on this thing - something has to be done to counter it at least a little. What??? John Gibbons --- where are you?

What a way to start the day - or should I just end it right here and go on back to bed ---

Frustration is one word.

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Finding the Facts Bureaucrats Hide

by John Rothchild

Information is a growing problem for the bureaucrat. The less action he performs, the more things he must write down. But the more he writes down, the greater the chance that something he records will be exposed and used against him. The xerox machine has brought the joy of reproduction to the agencies, but it has also brought fear—it is safe to assume that without the xerox, there never would have been anybody patient enough to copy down the 47 volumes of the Pentagon Papers by hand.

In any case, the heat is on all across government. Bureaucrats are tightening security, and from the State Department to the Federal Communications Commission, they are locking up the xeroxes at night. These measures are brought, in part, by the anxiety that more insiders will be smuggling the truth out in their briefcases. But the unsettled atmosphere has much more to do with the effects of a little-known but promising law—the Freedom of Information Act.

John Rothchild is an editor of **The Washington Monthly.**

Freedom of information is important because it recognizes for the first time that an average citizen has the right to pry open almost any government file he wants. Its theory challenges the long-held belief that the government files are its own private property, that internal agency deliberations, like an individual's thought processes, must be protected from outside interference. Freedom of information posits that studies, memos, and reports are as much a part of the public domain as national forests.

In practice, the law hands the government the burden of justifying its withholding of information. While the citizen previously had to prove his need for data, the agencies are now required to release it to "any person." If requests are denied, the petitioner can take the agency to court, a remedy unavailable under previous law.

All these promising strictures, if fully applied, would put many prospective Ellsbergs out of work. Most

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files would be open to all. Yet most Americans are not even aware that they have been offered a new freedom. Perhaps this is because most of us have, at one time or another, actually opened an official government report, only to arrive at the last page in bleary hypnosis, relieved that we couldn't remember what we had read. Official reports have always been the greatest argument for government secrecy—and there is a queasy notion that what they bury in the files must be as dreary as what they publish; that if we ever opened one of those files we would be met with a literary Pandora's revenge.

One would, therefore, have to be very frustrated to passionately desire the government's records, and the public has never reached that threshold. Congress has. Support for the law grew not from the quality of the files, but from the continued refusal of the Executive to disclose them. Congressmen found that freedom of speech doesn't mean much if you don't know what you are talking about, a fact which has not deterred them from talking, but nonetheless has moved them to pass this law.

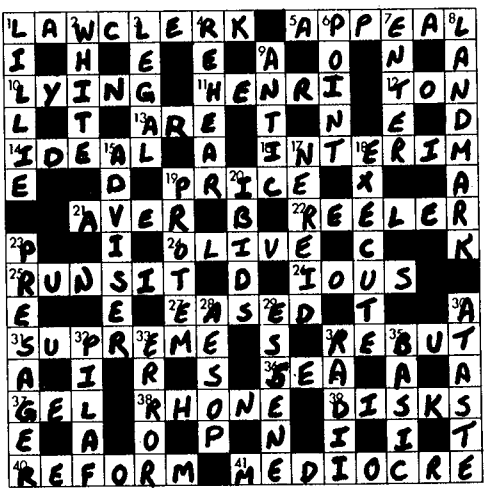
Whistle-Blowers without Consent

Congressmen also found in freedom of information the rare advantage of risk-free principle. The law, after all, didn't affect their own closed-door sessions and secret operations, since it only applied to the Executive. It took something less than a profile in courage to take an uncompromising stand on the "peoples' right to know."

The agencies were unanimously opposed. Freedom of information would force them to be whistle-blowers without their consent. Why would any self-respecting bureaucrat want to reveal the under-pinnings of his own decisions, which would be taken out of context to make him look bad? Bureaucrats are not rewarded for revealing information, but there are penalties for giving out information that should have been withheld. Many laws, like the pesticide regulations, view bureaucratic leaking as a much greater crime than actual violation of the law out in the field. In fact, where using too much deadly poison and endangering life carried a fine of $1,000 under the old pesticide law, the giving out of confidential information would cost the bureaucrat $10,000. A new bill up for consideration this year narrows the discrepancy, but the higher fine will still go to the bureaucrat.

Aside from tradition, the agencies could also cite three legal precedents to their withholding of information. First was the Housekeeping Statute, enacted over 150 years ago, which essentially said that as the government can bolt down its desks and chairs, so can it protect its records. Second was the doctrine of Executive Privilege, never challenged or defined in the courts, based on the notion that the President was accountable only to the people, and that Congress could not, therefore, pass laws forcing him to reveal information. And third was the Administrative Procedures Act of 1943, which had supposedly been a "freedom of information" law, but actually provided the agencies with so many loopholes that they could effec-

Answers to December puzzle:



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tively withhold any document.

Congressman John Moss, the real force behind the law, chipped away at the legal supports. He got one sentence added to the Housekeeping Statute, which required that it could no longer be used to suppress information. He helped influence Presidents Kennedy, Johnson, and Nixon to each say they would invoke privilege only personally and in extreme cases, which abolished the practice of the agencies themselves invoking the privilege as extensions of the Executive. And he drafted the Freedom of Information bill to amend the Administrative Procedures Act.

The proposed bill did not carry any penalties for the agency that withheld the records, but that was not enough to quell the opposition. It was said that Lyndon Johnson was dead against the bill, and almost didn't sign it at the last minute. Certain concessions had to be made in the amendments, which detailed what kinds of information could still be denied the public.

These amendments guaranteed secrecy for classified material, intra-agency memorandums, commercial or trade secrets, medical and personnel files, investigatory files for law enforcement purposes, among others. Two other amendments were added for special interests—the Dirksen amendment which calmed the oil people by prohibiting the release of data on drilling and oil reserves, and the Humphrey sop to the bankers, tacked on to "insure the security and integrity of financial institutions" by keeping government reports of their operations covered up.

Blotting the Law

When it looked like the bill would pass, the real battle ensued over the interpretation of amendments, where the difference in a comma might keep tons of data hidden or revealed. For instance, did the "internal personnel rules and practices" exemption refer to merely personnel practices or any internal practices?

The price of the bill was that the Justice Department, representing the agencies, sit down with the Moss subcommittee that authored the bill, to work out the interpretations of the wording. The resulting House report, and later the Attorney General's memorandum on the act, could later be taken by agencies and judges as the intent of Congress. Justice made sure that the interpretation was as loose as possible, to satisfy the agencies that whatever they wanted to hide would probably fit into one or another of the exemptions.

The bill passed without a dissenting vote, evidence if anything, of these weaknesses. Johnson, who had opposed it from the start, was satisfied enough to sign it into law with rhetorical flourish on July 4, 1967, when he said, "I have always believed that freedom of information is so vital that only the national security, not the desire of public officials or private citizens, should determine when it must be restricted." Johnson then gave a preview of how the noble sentiments of the act would apply by refusing to release the original draft of his speech.

The agencies didn't take this new law sitting down.

While such words as "public interest" and "interfere with efficient operation" were eliminated by the letter of the law, they have not yet left the spirit of the bureaucrat any more than the adrenalin of "Dixie" has been removed by the edicts of the Supreme Court. Every bureaucrat knows when "national interest" is being threatened—he can feel that rush of acidity to his stomach that warns him that whoever is attacking him is not acting with the nation's welfare in mind. Those outside may accuse him of having veins full of duplicating fluid, but it is such a personal sensitivity to national matters that makes the bureaucrat feel worthwhile.

The agencies could take an occasional expose or accidental leak, but

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in the new law they were confronted with the first threat of a deliberate and systematic uncovering of the machinery of government. They had hidden behind Kafka for so long—behind the myth that because bureaucracy is unintelligible from the outside, it is also unintelligible from within—and now the ruse would be undone. The bureaucrat would be discovered running his patterns, and it was at the patterns that people like the Nader study groups struck with the new law, demanding literally hundreds of documents all across Washington. Any bureaucrat worth his blotter should know how to retaliate.

Nader's Raiders approached the files during what used to be the long, lazy time between the seasons of money-gathering and money-spending and made the summer one of the most frantic times in government. Hardened journalists were never a threat like the summer students, and the resulting grapple was one of the greatest tests of law against culture since Prohibition. Remarking on the aftermath, Nader lawyer Robert Fellmeth said: "The devices employed by federal officials to avoid compliance with the Act betray an ingenuity which could usefully be employed in the solution of problems under the agency's or department's jurisdiction." In some places, the word "Nader" was enough to bring the heavy iron bars sliding across cabinets all over town.

Sanitizing the Shelves

The best example of spirited bureaucratic defense occurred in the Department of Agriculture. While Agriculture's gambits in foiling the investigators were neither the most ingenious nor the most subtle, they did show the lengths to which an agency would go to avoid losing its claim to the privacy of its memory. The saga at Agriculture is recorded in *Sowing the Wind*, an excellent Nader report on pesticides and meat inspection by Harrison Wellford:

Joe Tom Easley and Bernard Nevas, summer interns, were assigned by the Nader group to investigate Agriculture in 1969. They informed then-Secretary of Agriculture Clifford Hardin that they wanted to focus on the Pesticides Regulation Division (PRD) where permissible strengths and uses of commercial pesticides were decided and enforced. On arriving at Agriculture for what they thought would be a relaxed chat with Hardin, the two students were confronted with what Agriculture called a "visit of state," and met in a conference room not only with Hardin, but with 15 of the most important department heads as well.

Taking this as evidence of interest in their efforts, and unshaken in their faith in the Freedom of Information Act, the Raiders made a written request for 14 groups of records and an oral request for the registration file on the Shell Vapona No-Pest Strip. They were certain that none of these requests violated any of the amendments to the Act. They were surprised, therefore, to find that Harry Hays, head of the PRD, said that he doubted if any of the material could be provided. Hays did, however, reaffirm his support of the spirit of the investigation and invited the Raiders to a series of briefings on how the PRD really worked. The briefings were to begin the following day.

The first briefing also became the last after some probing questions by the students convinced the PRD officials that cordiality was not going to substitute for hard data. From then on, relations deteriorated. Hays told the two that he was denying access to everything on the list and that the Freedom of Information Act "didn't apply." He explained that the division had already been investigated enough.

The word went out to the PRD staff that a memorandum had to be filed after every interview with a Nader Task Force member, and that all interviews were to be cleared through Hays. This dictum was later rescinded, and several people in the Department refused to comply with it

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anyway, but it set the tone for what was to come. Meanwhile, the two students filed the written appeals necessary before freedom of information cases can be taken to court, and decided to wait things out in the PRD public library.

The library became the main battleground for the recorded memory of the division. At first, the library opened onto the main corridor, and the librarian granted them free use of the documents, including some denied by Hays.

On a subsequent visit, Nevas and Easley found that the library door was locked. A hand-lettered sign told them to enter through an office two doors down. There they met up with the librarian, who said that the division had a new rule that all visitors to the library would have to be cleared through Dr. Hays. They were told to wait in the library while the librarian went to find Hays to ask for the security clearance.

Then, Wellford explains, "After browsing a few minutes, Easley suddenly noticed that two large volumes published by Shell Chemical Company which he had examined earlier were now missing. Searching the shelves more carefully, they discovered that the library had been swept clean of all Shell publications, although the library had many books and reports from other pesticide manufacturers. Even more mysterious, all records of Shell publications had been removed from the card catalog.

"At this point, Dr. Hays came rushing in, flushed and obviously out of breath. 'What are you doing here? May I help you?' Easley replied, 'Just browsing,' and asked about the missing Shell manuals. Hays became flustered and stared intently at the shelves as if looking for the missing volumes."

Even without the Shell material and some of the card catalogs, the library itself finally became too much a symbol of Department laxity and softheartedness. In early August, two other Task Force members were told by a PRD official that they could not enter the library at all. He offered to "consider" any formal request made for some specific item.

Privacy survived the summer, but two lawsuits brought by project director Wellford resulted, two years later, in the release of the information so energetically denied. By this time, the Pesticides Regulation Division had moved to the Environmental Protection Agency, and Hays had lost his job. Either because of the suits, or because of the new agency, Wellford says, the Nader people have had little trouble getting everything they wanted out of EPA. Recently, however, they were refused the files on toxic residues left on crops after they are dusted with pesticides, and Wellford is threatening another freedom of information suit.

No Tickee, No Washee

While not all agencies shared the passion of Agriculture in bludgeoning curiosity, most of them showed the same ingenuity in detouring requests. The most common ploys include:

a) Commingling. The idea here is to take non-exempt material and slip it into a classified file, and then complain that separating the confidential from the public could take too much time. This is a favorite at the Defense Department where, for instance, information on the amount of oil pumped from ship bilges was refused because it was going to be included later in a classified report. The Nader Agriculture Task Force got a similar denial from deputy administrator F. R. Mangham: "Certain of these files do contain information that. . . would be available if separated from the basic file. . . however, our staff and work schedule is such that this cannot be done on a crash basis. Therefore, it is necessary that the entire file be restricted."

b) No Tickee, No Washee. The agency refuses to provide index files and master listings of all the documents available, then accuses any inquirer of "fishing for information"

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and withholds requests because they aren't identified properly. This was a standard gambit of the pesticide people, but it backfired when the judge in one of the Wellford cases said that an agency cannot claim both that it is unable to find the files and that it would take too much work to separate the records in the files.

c) A Small Fee. The law said that agencies could collect reasonable fees for searching out and duplicating records, but set no uniform standard. In some agencies, the price of documents seemed to depend more on their sentimental value to the agency than on the actual costs of duplication. In the summer of 1968, the Nader group was offered a copy of the Federal Trade Commission's organizational manual at 60 cents a page, or a bargain for $144. The Department of Agriculture said it would be glad to prepare its registration files for public view, if the inquisitors would pay the $91,840 and wait 1.6 years.

The cost dodge has also become a key element in the computer retreat, wherein an agency hides all vulnerable information inside the computers and then says there is no program to print it out. When a group of mine investigators asked the Bureau of Mines for data on which mines had the worst accident records, the Bureau spokesmen complained of all the garbage in the computer and said a printout could be had—for $2,000.

d) We Don't Serve That. A corollary to the computer retreat is the claim that the requested information has never been collected. The Interstate Commerce Commission, for instance, doesn't ever get around to classifying or even counting complaint letters from consumers. The Food and Drug Administration said it did not keep any brand name list of beverages containing cyclamates.

Usually, under pressure, the agencies admitted to having the materials, but if the investigators had not pressed them or learned from other sources that the records existed, nobody would have been the wiser.

e) The Working Paper. In this ploy, information is provided freely to insiders, but not to the public, on the grounds that it is still in rough, preliminary stages. Wellford says that Agriculture used this tactic to delay release of a report on the pesticide 2-45T. While a draft of the report was completed and circulated to industry people in August, 1970, the "final report" containing only minor changes from the draft, was released in May, 1971.

The working paper ban is usually justified on the grounds that the release of incomplete material would give the public a "warped impression." The Interior Department's Federal Water Pollution Control Administration refused a Nader researcher status reports on water pollution abatement programs at 20 federal installations, because all the figures were not in. On further questioning, it was discovered that Interior's real fear was its relationship with the Defense Department, which was "finicky about releasing figures on total sewage." For national security reasons, Defense didn't want the enemy to find out the amount of sewage coming from domestic military bases. "Presumably," Nader says, "the enemy could rush back to its abacus and calculate the manpower strength of the base."

If all these ploys fail, an agency can generally duck under the exemptions. Any record collected by or about a private corporation can easily enough be called a "trade secret." Any report or study done for an agency can be an "intra-agency memorandum" and withheld to protect the privacy of the decision-making process, even though the decision has already been made. A file will almost invariably fit one or more of these categories, or, if not, it will surely fall under "national security" or "commercial and financial information." The trick is to claim as many of the exemptions as possible, in the hopes that one of them will stick in court. The Nader group at Agriculture, for instance, was hit with trade secrets,

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intra-agency memorandum, no tickee, no washee, work overload, commingling, and high fees simultaneously.

Hiding the Bullets

The bizarre uses of the exemptions are best illustrated in the saga of author Harold Weisberg, a member of the Committee to Investigate Assassinations, a group of ad hoc sleuths devoted to the solving of the JFK–MLK–RFK trilogy, with principal emphasis on JFK. The file that Weisberg wanted, and is still seeking, contains a scientific analysis of the bullet fragments found after the murder of President Kennedy in Dallas.

Weisberg first asked the Justice Department for the bullet analysis in 1966. He wanted to know if the FBI's scientific findings supported the Warren Commission's revised "three-bullet theory." That theory began as the simple conclusion that Oswald had fired three shots, two striking Kennedy and one wounding Governor Connally. After it was later discovered that another bullet had struck a curb near the Book Depository, the Commission was stuck with an extra shot to account for. It modified its early findings by giving one of the bullets the double task of going through Kennedy and into Connally, thus freeing the extra bullet for the curbstone. The FBI's spectrographic analysis of the found fragments would be a concrete test of the validity of the three-bullet theory and the contention that all the bullets came from Oswald's gun.

When Weisberg asked for the spectrographic findings, the FBI told him they were available in the National Archives, where the rest of the evidence considered by the Warren Commission was on deposit. The Archives, however, said they didn't have the file and rebounded Weisberg to the FBI. This time, Weisberg personally stood by while the FBI called the Archives and identified the file, only to be told officially that the Archives didn't have it. After that, confusion became lockjaw, and as Weisberg says in a letter to then-Attorney General Ramsey Clark, "Your department became mute for more than four months."

The spectrographic test was part of selected material which had never even been presented to the Warren Commission, much less turned over to the Archives. And, if there was something in the test to warrant special secrecy, the Warren Commission never appeared to be very curious to know what it was. FBI Special Agent John Gallagher, who did the spectrographic tests, testified by deposition to the Commission, but was never asked about the results. Another agent, Robert Frazier, did refer to the tests, but according to Weisberg, "Agent Frazier's testimony is merely that the bullets were lead, which would seem to be considerably less information than spectrographic analysis would reveal."

After a long delay, Weisberg was finally told by the Justice Department that the data he sought was blocked from disclosure by Exemption Seven to the Freedom of Information Law, which said that any "investigatory file compiled for law enforcement purposes" could be withheld from the public. Weisberg then retained lawyer Bud Fensterwald, another member of the Committee to Investigate Assassinations, who had helped draft the original act while on the staff of then-Senator Edward Long, and filed suit.

Exemption Seven had been put into the law with the FBI specifically in mind, to protect the agency's right to quietly prepare a case against somebody without fear of early disclosure that might jeopardize an upcoming trial. The exemption gave firm legal sanction to an ongoing FBI practice that had never had any basis in statute before.

While people like Ralph Nader sought such information to prove that the government was lax in prosecuting corporate criminals, the government could withhold it precisely because

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prosecution was still possible. The exemption, therefore, added one more benefit to the growing rewards of inaction—by making prosecution forever imminent, the government would face neither corporate retaliation nor public scrutiny of its failure to stand up to corporations.

The judges in several freedom of information suits, however, have not bought the government's imaginative vision of its coming glacier of legal action. They have generally limited the government's claim of exemption to information collected in cases that actually might be brought to trial. This made the claim especially tricky for the Warren Commission material. For one thing, the federal government had no jurisdiction to prosecute the assassin of President Kennedy, a defect later remedied for future Presidents; and secondly, even if the FBI was thinking of further prosecution, Weisberg would soon be curious to know just who it was they were bringing to court for Kennedy's death, more than five years after they had solemnly accepted the Warren conclusion that it was a solo job.

Since the Freedom of Information law is still young, its usefulness depends on how sympathetic a given judge is to the intent of Congress as opposed to the tradition of the agency. In the Weisberg case, the judge was particularly sensitive to the latter, not only ignoring the question of whether the file fit the exemption, but also overlooking another of the law's reforms by asking Weisberg "for what purpose are you seeking this information?" The judge also bypassed the exemption problem to find for the Justice Department, without giving a reason. All this, of course, has made Weisberg even more anxious to know what is in those spectrographic results, and he is appealing.

Saving the Hoarders

The Weisberg case, one of about 200 suits brought under the Act so far, shows that the government can no longer brush off the curious with silence or guttural refusals. It now knows that capricious denials mean more court fights. The government's fear of a build-up of adverse decisions tightening the exemptions is evidenced by a memo sent from the Justice Department to all agencies in December, 1969. Justice warned that bureaucratic passion for the national interest might lead an agency to overlook the cold letter of the law, and suggested that each agency be ready to sacrifice a few files for the safety of its fellow data hoarders:

> Although the legal basis for denying a particular request under the Act may seem quite strong to an agency at the time it elects finally to refuse access. . . the justification may appear considerably less strong when later viewed, in the context of adversary litigation, from the detached perspective of a court. . . and a possible adverse judicial decision may well have effects going beyond the operations and programs of the agency involved. . . .
>
> In view of the foregoing. . . litigation should be avoided if reasonably practicable where the government's prospects for success are subject to serious question.

Like the Weisberg case, the Nader summers also say several important things about the law. First, in some cases, it can work—Wellford won two suits against Agriculture. But with the intent of the exemptions still left vague, there is no assurance of victory, and victory is often empty after the two-year delay in the courts. For timely information, the Act is useless. The government has 60 days to respond to the original suit, and enjoy agency delays before that point and court appeals after the first trial. As for timeless information, there are very few institutions or citizens around interested enough in one project to incur the legal fees and the delays. The real beneficiaries of freedom of information have been precisely those who needed the law least—lobbying groups and corporations, who are self-interested in government studies. *The New York Times* did not think it worth the effort to sue the

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Renegotiation Board for material on an evaluation of defense contracts, but Grumman Aircraft, one of the interested subcontractors, did sue and finally won the case.

By systematically testing the bureaucratic barricades for the first time, the Nader forces also showed how little a threat it takes before an agency feels desperate enough to haul out its big guns. Those who thought that the agencies' original obstruction was a measure of the real value of the information sought were, in most cases, disappointed. The inquiries that closed the public library in the Pesticide Regulation Division uncovered some interesting data, but nothing that would crumble the agency.

The law, if anything, has increased the bureaucratic paranoia about public scrutiny. In almost every case brought before the courts, the agencies said disclosure would interrupt their work and make regulation impossible. On the one side, the agencies tend to believe that the most dire threat to the public interest is the public itself. On the other side, they are convinced that effective regulation depends on the will of those regulated. But sometimes even a threat of disclosure can have what most people would call a positive effect on regulation as in the chicken-cancer case.

Relaxing the Tumors

An industry advisory panel, composed of veterinarians and animal disease specialists, secretly recommended to the Department of Agriculture that its ban on the use of chickens with cancerous tumors be relaxed. Under the old system, if any tumor were detected, the whole chicken would be condemned, but under the new plan, the non-tumorous limbs would be cut up and sold as chicken, and the tumorous parts ground up and sold in hot dogs.

Normally, the Department would consider such a request a private matter, so that its advisory panels, as an Agriculture administrator once put it, can have a "free and frank discussion" on the merits of a particular case.

This time, however, the news of the advisory panel proposal got out by accident, so the Department was on notice that whatever decision it made on the case would get publicity. Richard Lyng, the assistant secretary in charge of food protection, took the prudent bureaucratic course of going outside the Department for a human medical opinion, seeing as the veterinarians could understand cancer in the soon-to-be-slaughtered chicken, but perhaps not in humans. The matter was turned over to the U. S. Surgeon General, who appointed a review panel. In February, 1970, he recommended that the old system be retained and any chicken with visible evidence of cancer be tagged unfit for human consumption. The Secretary of Agriculture adopted his recommendation.

Without the accidental threat of this publicity, there is a strong chance we would be eating cancerous tumors at the hot dog stands today. The chicken cancer case is a good illustration both of the need for freedom of information and how even a federal agency can benefit from it. In the past, since an agency could legally withhold almost anything, it was the focus of industry blame when leaks occurred. If the law is enforced, however, the agency can take the heat off itself by appealing to fate and forces beyond its control. This could create both better decisions and less corporate pressure on the bureaucrat, because the corporate heavies will know that the information will be released whether the agency likes it or not.

But the bureaucratic fear that systematic disclosure will hamper rather than increase his effectiveness is related to Harrison Wellford's fear that publishing his study on pesticides would ruin his chances of further cooperation from the Department of Agriculture. Wellford was surprised to get precisely the opposite result. Now, he says, they call him up at night. They also respond immediately to

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requests. Where a few once showed him goodwill in deference to his cause, now many more are forced to respect his power. It is a lesson, however, that few bureaucrats have had the opportunity to learn.

Congressional Convicts

Even the power of curiosity, though, has its limits. A Congress cannot expect to confer on Nader's Raiders and others a right-to-know that eludes even its own members. Any inquiring citizen with widespread hopes for freedom of information will be sobered by the failures of even the authors of the law to get the Executive to reveal itself.

Ironically, as the law opens more files for the citizen, the Congressmen face increasing condescension as the Executive ignores its demands for information. In fact, while Congress did not write the law with its own privileged members in mind, Senators and Representatives have had to turn to the Act to find out what is going on. Rep. Henry Reuss had to sue for a government study on the SST, and more recently, Rep. John Moss himself went to court after the Administration refused to provide him with the complete set of the Pentagon Papers. Moss and his Freedom of Information subcommittee demanded that all 47 volumes be turned over to his committee by 5 p. m. on Wednesday, June 22, but that day passed and Moss didn't even get the courtesy of a reply. The Administration finally gave the complete set to both of the friendly Armed Services committees—where curious legislators could file in, stripped of pencils, paper, and sharp objects like convicts at a shakedown, to take a look at how the government used their war votes.

Moss still hasn't gotten the full Papers, although all Congressmen were finally provided with the bulk of the material, but with the controversial volumes left out. He has sued in the federal courts under freedom of information, finding that his leverage as an elected leader is no greater than his claim as "any person" under the act. Somehow, the notion that Moss and the man-on-the-street have an equal chance of getting the files is more threatening to than confirming of the strengths of democracy.

Other examples abound. When Rep. Pete McCloskey asked for photographs of villages in Laos that he knew were in the hands of the Defense Department, he was given the usual silent treatment and then told by a Department of Defense spokesman: "I cannot see that the civilians in Laos would be enhanced by our further exchange of photographs. . . it is neither feasible nor useful. . . to furnish extensive photography in Laos." Senator J. William Fulbright, himself a frequent victim of Executive tetanus, recently asked the General Accounting Office, which is specifically empowered to evaluate the Executive, to tell of its frustrations in getting information. The GAO responded with a lengthy report which said that while explicit denials were rare, the obstacles and delays amounted to the same thing.

The GAO recited a long list of statutes that empower it to full access in its reviews of government programs. It then recited a longer list of occasions where the statutes were ignored: "The Departments of Defense and State have denied permission to GAO to visit the Thai and Korean camps in Vietnam"; "in March, 1971, 13 months after GAO informed the U. S. Embassy in Germany that we planned to conduct a review of occupation costs in Berlin, we were informed by the Department of State that we would not be permitted to do so"; "we were denied access to official trip reports by DOD officials in Greece."

There is very little that the GAO, or the Congress itself, can do to force the Executive to spill. Congress can cut off money, or, supposedly, hold a federal official prisoner in the House for contempt. It would be difficult, however, to find any federal marshal willing to arrest John Mitchell or Mel

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Laird and drag them over to the basement on Capitol Hill.

The main obstacle to enforced openness in government, which the freedom of information law scrupulously dodges, is the doctrine of Executive Privilege. Essentially, this doctrine says that the President doesn't have to tell anything he doesn't want to. And while the privilege isn't formally invoked very often, it is still the real basis for the security that permits the Executive to refuse to give information without offering any reason for doing so. Executive Privilege is also the prime rationale for the government's claim of a right to classify.

When President Eisenhower issued Executive Order 10501 in 1953, thereby creating the current classification system on which over 20 million secret documents now rest, he cited the "authority vested in me by the Constitution and statutes." As it turned out, there were no statutes, so the only authority he could claim to classify records was Executive Privilege, based on the separation of powers clause of the Constitution. Congress has been wary of challenging the claim. Some laws, like the Military Assistance Act, do provide for a cutoff of funds if the President refuses to release desired information without claiming Executive Privilege. But claiming Executive Privilege is as easy as saying the words. Senator Fulbright saw a victory in his recent use of this provision to force President Nixon to cite his privilege in denying Congress five-year projections on military assistance. So Nixon merely said, "O. K., Executive Privilege." It was something like convincing the bully to say "uncle" while he still has you pinned to the ground.

The Conservative's Mylai

While Congress did not challenge either executive privilege or the classification system in the freedom of information law, the courts, until recently, were equally unwilling to rule on the government's claims. The first instance of the court's timidity was when it refused to open the Operation Keelhaul files.

The Keelhaul files are the conservatives' Pentagon Papers. Unfortunately, no patriot could be found to release them from within, so one may still only guess at the stories surrounding the decision of the Americans and the British to send an estimated two to five million anti-communist Russians back to Stalin and, presumably, to death or the salt mines. The estimate is provided by Julius Epstein, professor at Stanford University's Hoover Institution on War, Peace, and Revolution, who in 1954 came across a notation of "Operation Keelhaul—The Forced Repatriation of Communist Jews" which was mistakenly left in a card catalog at a military archives. The Defense Department predictably denied Epstein's request for the file on the grounds that it was classified.

In recent years, Keelhaul has become the right-wing Nuremberg suggestion. In any month's Congressional *Record*, you can find Rep. John Rarick chastising our lack of priorities, not to mention our hypocrisy, in discussing the more dubious war crimes of recent times, when we let such egregious and long-unsettled war crimes go unprosecuted. Let's get through with the old crimes before we worry about the new, seems to be the thrust. Rep. John Ashbrook, the most consistent supporter of Epstein's efforts to get the Keelhaul file, wonders how the Defense Department can callously cover up an incident "several thousand times bigger than the massacre of Mylai," and one that happened so long ago that its record could not possibly affect national security. Epstein sued under the Freedom of Information Act, and became the first to challenge the national security exemption.

All this support notwithstanding, the lower court threw out the Epstein suit. And on appeal, Epstein lost again when the court refused to examine the documents *in camera* to test the government's claim that their release

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would imperil the nation. The court said it could not judge the merits of classification, because "Congress did not intend to subject such classifications to judicial scrutiny to that extent."

The Epstein case remains a clear and detrimental precedent for the future prospects of fighting the classification system under the law. Recently, a U. S. District Court cited Epstein in its refusal to order the government to turn over the four volumes of the Pentagon Papers that Congressman Moss is still seeking. Again, the court dodged the issue of Executive Privilege and refused to review the documents *in camera*, saying, in effect, that it was sure that these particular volumes involved national security, even though it could not look and see. The judge in the Moss suit, Gehard Gesell was the same judge who earlier had ruled that *The Washington Post* could print the Pentagon Papers. In the earlier case, he did review the documents in question, but the issue was different because the newspaper already had them in its possession. Perhaps in the Moss case he couldn't face the drudgery of reading any more Pentagon Papers.

In another recent decision on a secret government study of the potential effects of the atomic blast on Amchitka Island, the Cannikin Papers, a court for the first time in history did rule on Executive Privilege, saying that the government had to turn over the papers to a lower court for inspection *in camera*, to see if a claim of the national security exception applied. Nobody knows what the precedential effects of the Cannikin case will be, although it is a clear break from precedent and contradicts both the Moss and Epstein decisions.

Editor's Relief

Such are the limitations of the law. Its failings, however, have more to do with the handicaps of the institutions that were best equipped to use it. The real beneficiary of the law was not supposed to be "any person" like Weisberg, but the working newspaper, where the daily lust for facts would outweigh any bureaucrat's blotter. Newspapers were the prime lobbyists and clarions of the law, as journalism societies across the country organized freedom of information cells to put pressure on one branch of the government to open the drawers of another.

The results of their efforts seem most visible on the editorial pages before the law was actually passed. People who desired freedom from reading about how the old, tired freedoms were being threatened found some relief in a whole spurt of editorials on the fresh topic of the people's right to know and the newspapers' happy evaluation of their obligation and ability to fulfill that right.

Furthermore, newspapers could view this effort as more than back-patting, since most readers were not immediately convinced of the personal benefits they would derive from this new freedom. Like Cortes explaining Catholicism to the Aztecs, the newspaper publishers saw whatever good publicity they were giving themselves as secondary to the difficult task of evangelism that often comes with a heroic defense of somebody else's freedom, especially a freedom that is not readily understood.

On the less glorious level of day-to-day reporting, however, the evangelism of the editorial pages did not seem to spill over onto the mundane affairs of the news pages, or the publishers' increased budget for legal counsel to defend the suits. In fact, of the more than 200 suits brought under the Act, the Justice Department estimates that from five to 10 have been filed by newspapers. While some editors note that the mere threat of the law has produced many documents, a survey in *Editor and Publisher* magazine of June 26, 1971, shows that of 123 Associated Press managing editors who answered a questionnaire, only 16 said they had used either the law—or the threat of it—to get information. And 59.4 per cent of the

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editors said they never had any trouble getting information from federal agencies.

The yawing distance between the newspaper's ability to glorify freedom of information and its ability to put freedom to work suggests more doubts about the usefulness of newspapers than about the utility of the Act. Editors contend that it is the nature of news itself that obstructs freedom of information and explain that filing suit to get a copy of a secret government study opposing the SST months after the final vote is taken is work for historians, not journalists. They also point out that the news value of any single document does not usually justify the high legal fees, and that the good reporters can always find out what is going on through the more informal devices of friendship and liquor.

It is journalism itself that works out the tricky trades between news and novelty, and newspapers who set the metronome of public attention. The job of covering the official or the powerful is made a job of daily routine, dependent on a continuous flow of similar documents, while the job of uncovering the travesty is made dependent on surprise. The continuing report on what the President says is a boring obligation, but a continuing report on FDA meat inspection or bombing of villages is contingent on its value as entertainment. It is the double standard between the routine of officialdom and the necessary surprise of the pose that threatens freedom of information—the discovery of cancerous additives in meat is a story only this week, and next week we will eat the same meat while mentally absorbed in something else. The tempo of the expose dictates that another story on cancerous additives cannot appear until we have forgotten the horrors of the present, or unless the story can be disguised as something new.

This is why the newspapers' effectiveness is limited to those issues that can be resolved in the same amount of time as the editors perceive to be the public attention span. A Carswell could be defeated by newspapers because two months of articles did not quite cross the threshold of boredom, a war could continue undefeated for the opposite reason. A dangerous pesticide program can survive the newspapers, because the poison can be sprayed day after day and will still be on the leaves when the last font has been melted for a new crusade and when the last lead has exhausted the writer's imagination for novelty. News coverage must be predictable for public figures, unpredictable for public problems. The scattershot expose is rarely a fatal challenge to a bureaucrat, whose greatest virtue is patience, and who defeats his enemies by outsitting them.

The Tribal Computer

In the end the bureaucrat still has possession. As the law approaches, the information can retreat to new outposts. In the process, the agencies may be forced to regress to a time when business is carried on by word of mouth, when thoughts are left unrecorded, when facts are deliberately and hopelessly jumbled in their computers' memories.

This gets to the deepest level of freedom of information, whether the government has any obligation to collect accurate data at all. It is more than a theoretical question. The Bureau of Labor Statistics has abolished the urban poverty survey for the upcoming election year. The same agency abandoned the monthly briefings on unemployment statistics, and is replacing the rigid technicians with much more versatile political types. The Administration is also trying to rid itself of the poverty-level index, changing the definition of poverty because too many people are now defined as poor.

If these trends continue, by the time the files are pried open for good, there may be nothing of value stored there any more. ■

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Tidbits and Outrages

Around the World in Twenty Primaries

As the campaign approaches, the Democrats are awakened from a despondent slumber with a rush of commitment, and a clarion call to action. Not a cent of money nor an ounce of power was to be wasted in the effort to put a good candidate into nomination, and hopefully, in the White House. As Jim Hightower writes in *The New Democrat*, "now is not a time for palliatives from the Democratic Party—it is a time for passion."

The problem, of course, is how to channel all this energy, and just two pages beyond Hightower's exhortation, we find the solution from the Americans for Democratic Action. An ad for nine exotic foreign tours invites us to "travel with Americans for Democratic Action" as the battle lines are drawn. For those who feel the earliest commitment, for example, the ADA offers the chance to hit the hustings on the "Mayan Heritage Trail," which runs from Chichen Itza to Oaxaca, Mexico. This 15-day whistle-stop, which costs only $695, gives us ample time to reflect on the Party's Latin American plank with the mayor of Uxmal.

For those more concerned with Asian policy, there is the "South Pacific Coral Route," which takes one through Tahiti and gets into Fiji in time for the New Hampshire primary—at a price of $1862. And if things go well in New Hampshire and on this "Tour A," you can extend the dialogue with 10 extra days on "Tour B," with the residents of Bali and the Philippines, while the residents in Florida are deciding at the polls.

For the folks alarmed about the Africa question, there is the "East Africa Mini Safari," a fact-finder on the game reserves for 22 days, only $1465. There will be deluxe hotels in the cities, but only "the best available in the game reserves" for the staunch grass-rooters.

These warm-ups are not evidence of a complete commitment, such as that provided by the "Classic World Tour," which leaves right after the Rhode Island primary and gets back 34 days later—just in time to congratulate the winner in Massachusetts. Anyone hung up on the war may find himself much better prepared to counter the arguments of Scoop Jackson after the "Orient Introduction," 24 days, leaving April 15. Jackson's supporters are likely to opt for the 15-day "Independence Day in Israel" affair, while other activists will draft working papers on the Canary Islands holiday or plot strategy on the "Ski Trip to Chamonix."

Traveling with the ADA should get you back in time to toast the winner of the Democratic nomination and rest up for the presidential tussle. The ADA has not yet announced its itinerary for that crucial contest.

David Broder in *The Washington Post*, on the eighth anniversary of the assassination of John F. Kennedy:

One remembers him quoting on so many nights in that campaign against Richard Nixon, the words he loved from Franklin Roosevelt's 1936 acceptance speech: "Governments can err, Presidents can make mistakes, but the immortal Dante tells us that divine justice weighs the sins of the cold-blooded and the sins of the warm-hearted in a different scale. Better the occasional faults of a government living in the spirit of charity than the consistent omissions of a government frozen in the ice of its own indifference."

Those words have more force now—in this city of frozen-faced men—than they had then. As Lyndon Johnson feared the free play of reasoned debate, so Richard Nixon seems to fear the consequences of concern, compassion, and a generous spirit. His is government by the grim; Johnson's was government by the sly.

Parkinson's Pentagon

Orr Kelly has recently noted in the Washington *Star* that the Pentagon now has more three-star and four-star generals and admirals to command a force of 2.7 million men that it had to command 12 million soldiers during World War II.

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Tidbits and Outrages will be a regular feature. As with the Memo of the Month, we encourage our readers to contribute to this section of the magazine.

In order to give due credit for achievements and leadership, Congressman Romano L. Mazzoli guided the following resolution through the 92nd Congress Democratic Club on September 15, 1971:

WHEREAS, in the 92nd Congress the Democratic Party enjoys a majority of the membership of the House of Representatives, and

WHEREAS, it is in the best interest of the people of the United States that this majority be maintained or expanded in future elections; and

WHEREAS, the development of a substantial legislative record is a major assistance in re-election campaigns;

Be It Resolved By The 92nd Congress Democratic Club:

That the Democratic Leadership of the House of Representatives of the 92nd Congress is requested and urged to develop a program whereby first-term Democratic Members of Congress receive advance notice of important legislation likely to receive Party support and, thus, likely to become law, and that such interested Members be afforded an opportunity to join in the sponsorship of such legislation in order to compile a substantial legislative record on which to run for re-election.

From Checkerboard Square

Earl Butz, before an agricultural advertising and marketing seminar, on April 26, 1971:

It's a typical American characteristic to over-react to crisis. Before the hunger and malnutrition binge we were on, it was integration and segregation and we were all hepped up about that, you recall. And the people who are really suffering from this environmental binge we are on now are the integrationists. Their money's dried up, the support is dried up. These fellows are really hurting because we've forgotten about that. Well right now, I think that we're at the crest of what I would call the agitation curve in this environmental binge we're on.

Gross National Products of Countries and Net Sales of Corporations Interspersed, by Rank as of 1970:

	(in billions)
1. United States	$927.6
2. Soviet Union	468.0
3. Japan	185.6
4. West Germany	172.7
5. France	138.0
6. United Kingdom	111.8
7. Italy	87.3
8. China	86.0
9. Canada	75.0
10. India	50.0
11. Poland	46.1
12. East Germany	39.7
13. Brazil	33.7
14. Czechoslovakia	32.5
15. Australia	31.6
16. Mexico	31.6
17. Spain	30.7
18. Netherlands	29.8
19. Sweden	29.4
20. Belgium	24.1
21. Argentina	21.0
22. Switzerland	19.6
23. **General Motors**	18.8
24. Pakistan	17.2
25. **AT&T**	17.0
26. South Africa	16.8
27. **Standard Oil(N.J.)**	16.6
28. **Ford Motor**	15.0
29. Denmark	14.6
30. Austria	13.2
31. Indonesia	12.8
32. **Royal Dutch-Shell**	10.8
33. Norway	10.1
34. Venezuela	10.1
35. Iran	9.9
36. Finland	9.7
37. **Sears Roebuck**	9.3
38. Greece	9.0
39. **General Electric**	8.7
40. Philippines	8.5
41. Turkey	8.2
42. Korea	7.8
43. **IBM**	7.5
44. **Mobil Oil**	7.3
45. **Chrysler**	7.0
46. **Unilever**	6.9
47. Thailand	6.8
48. Colombia	6.6
49. **IT&T**	6.4
50. Chile	6.3
51. **Texaco**	6.3

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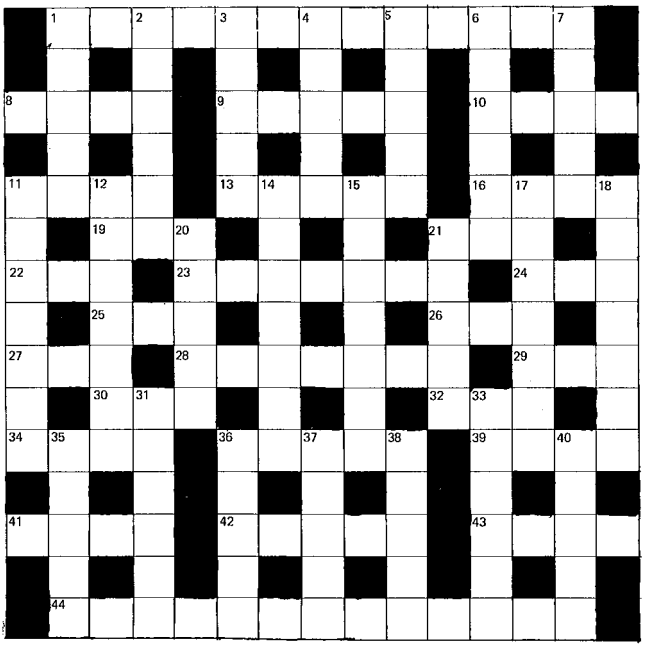
The Political Puzzle

by John Barclay



ACROSS

1. From his vantage point how could he hold joy so foreign? (6,7)
8. This will buy a lot back in Pakistan. (4)
9. He wined us well and often. (5)
10. Find George, the actor, at sea. (4)
11. Airline in novel alliteration. (2,2)
13. He laid a firm foundation for his son. (5)
16. With tone state they make Pa. (4)
19. My wife, not I, is very little. (3)
21. Following heat makes this creature pagan. (3)
22. ¾ths of a loaf is better than none, but not much. (7)
23. Washington luminary has hair, too, in the middle. (7)
24. Little Indians need net back. (3)
25. Wreath from Yale man. (3)
26. Why Israel must guard the middle. (3)
27. Find French here in middle of delicious meal. (3)
28. Throws away jewelry in spite. (3,4)
29. What Bill will become, if Congress approves. (3)
30. Revolutionary leader in such endeavors. (3)
32. If Dot had these distant thoughts, she'd be a tyrant. (3)
34. This memo set Eton back on its heels. (4)
36. Shouldn't this Park be in Tennessee? (5)
39. Sure purchaser of narcotics. (4)
41. Kind of European or Chinese. (4)
42. I lead a model life. (5)
43. He has the party at his feet. (4)
44. He won with no rich mind nor ax to grind. (7,1,5)

DOWN

1. One true alloy. (5)
2. She looks good in blue, or any other color. (6)
3. How a Greek ends his letters. (5)
4. "Like a rich ---- in an Ethiop's ear." *Romeo and Juliet.* (5)
5. Far East touch in Omaha noise. (5)
6. Kiters are intentionally not working. (6)
7. A tiny "f" will fit just fine. (5)
11. Man with no eye to me runs up with feeling. (7)
12. This should not happen to a fit calf. (7)
14. Railroad domes provide lofty view. (7)
15. Trade is on top of everything today. (7)
17. He catches what it pertains to, not I. (7)
18. Hopefully he is not guilty of treason. (7)
20. What Muskie wants, but & can he use it? How?
21. (5,5)
31. A mammoth chore I am willing to do. (6)
33. At the end, declarer can't lead nor ruff in 6 no-trump. (6)
35. New or old, he's got it. (5)
36. I care for her. (5)
37. You can hear the dater coming. (5)
38. See 18 Down in parasol only. (5)
40. A teen-ager usually has, but you'd never know it. (5)

The numbers indicate the number of letters and words, e.g., (2, 3) means a two-letter word followed by a three-letter word. Groups of letters, e.g., USA, are treated as one word. Answers to last month's puzzle are on page 16.

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THE CULTURE OF BUREAUCRACY:

Nothing Fails Like Success

by Eric Lax

As a governmental technique, the model program is doomed from the start. For one thing, it must show results by a specified time. The model may be granted a temporary extension, but must ultimately face an up-or-down judgment. This contradicts the good sense of any self-respecting agency, which lives on perpetual expectations. For another thing, model programs always attract adverse publicity because they are limited attacks on widespread problems.

Nonetheless, once in a while you find a model that is a genuine success. Take the job training program for convicts on Rikers Island in New York. After three years of federal seed money, the training center was thriving, and its record was so exemplary that everybody wanted to adopt it. Several agencies across the federal, state, and local spectrum clamored for the Rikers center. The shops and tools and teachers were already operating and ready to continue. It was only a matter of continuing the money, and choosing the victorious sponsor.

The Rikers program may merit only one line on somebody's budget, but it is a good example of what happens to a successful experiment once it loses the privileged status of being a model and has to stand in line with the rest. The fate of the training center may not be enough to prove a bureaucratic law, but it should help any model program manager avoid the perils of unmitigated success.

Rikers Island is a dot of land surrounded by barbed wire that practically adjoins the runway at New York City's LaGuardia Airport. On Rikers are housed the inmates of the New York City Reformatory, the Adolescent Remand Shelter, the New York City Correctional Institution for Women, and the New York City Correctional Institution for Men. There are about 5,000 men and women incarcerated on the island. About 2,000 of them, of which approximately 90 per cent are Puerto Rican or Black, have been there for as long as a year, awaiting trial because they could not raise bail money. The remaining 3,000 are serving sentences of up to five years in cramped, overcrowded cells and dormitories (two people in a six-by-eight-foot cell, for instance).

Because Rikers Island is a reformatory and correctional institution, we should expect that there should be a lot of reforming and correcting going on. There isn't. What there is a lot of, according to one guard, is "enforced idleness instead of rehabilitation." Inmates have nothing to do but march from one area to another, wait to be marched somewhere else, and stare at those bits of wall that aren't lined with other inmates. This may provide some inkling as to why they riot now and again, as they did in August, 1970. Because they have unlimited time to talk with each other about their criminal specialties, Rikers inmates become (or, rather, think they become, judging from the high recidivism rate) better car thieves,

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better robbers, and better muggers by the time they leave.

In October, 1965, in an effort to provide rehabilitative training for at least a few of the convicted male inmates (there are no programs for those awaiting trial), the Departments of Labor and HEW funded a pilot Manpower Development Training (MDT) program at Rikers to be administered through the New York City Board of Education. A $2.3-million classroom and shop facility was built and stocked with machinery. In the following three years, 1,200 inmates, most of them adolescents, were given basic education courses and trained in such skills as printing, woodworking, machine shop, furniture-finishing and repair, and metalworking—the job areas most open according to the New York State Employment Service. Programs concluded coincidentally with trainees' release dates, and once they were free, all trainees were able to take up jobs, often for the first time in their lives.

In an attempt to evaluate the Rikers program, Benjamin Malcolm, Deputy Commissioner of Corrections for New York City, wrote his master's thesis on it for New York University. Part of his thesis was a study of recidivism among a group of MDT trainees and a group of regular inmates. Although there are no definite figures available for the reconviction rate of all ex-Rikers inmates, or for those at other prisons, Malcom's study showed that the recidivism rate for MDT graduates was only one-third as high as that for regular inmates.

Searching for Sugar Daddy

On August 22, 1969, the funding authorization for the model MDT program expired, and the facility was closed. But because the program's record was outstanding, and because a request for additional funds had been submitted, there was every expectation of reopening it within a month.

Eight months passed, and nothing happened. Evidently, any concern felt by the Board of Education over the delay in funding the program was at best half-hearted. They apparently made little or no effort to find out what was causing the holdup, and since the money was not immediately forthcoming, the program staff was assigned to other schools.

Continued funding often becomes a bigger problem with models than with regular programs. Much like a Peace Corps volunteer, the federal government is supposed to support its models only until the locals can run them and fund them. The early assurance of support on the part of the locals, however, is often superseded by a nostalgia for the federal benefits, and a search for some way to get them back. Cities and states tend to view models as short-term gifts with the potential of being long-term gifts. Once the original grant is given, nobody can abandon the idea that somehow the big donor will come through for more. Thus, in the Rikers case, to get the money the agencies first had to convince Washington that they were healthy enough to someday take over the program. For the second installment, however, they had to evidence enough helplessness to justify more of the same. None thought that they should pay.

Notwithstanding the money problems, in April, 1970, in what can only be called a flash of optimism, the Board of Education appointed Mrs. Alice Reed to be teacher-in-charge for the new program, then expected to begin in June. Mrs. Reed—a very competent and determined lady who is a trained social worker and experienced teacher—was also involved with the first programs. When the money did not arrive, Mrs. Reed set out to discover both why her program was not yet going and what it would take to get it going. What it took was 23 months. (It should be pointed out that although Mrs. Reed had the title of teacher-in-charge, she was not paid for that position until the program began. Her real job was as coordinator of the Concentrated Employment

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Project in East and Central Harlem and South Bronx. All her effort on behalf of the MDT program was strictly a matter of her own time and money.)

She first learned that because the first New York MDT programs had been such successes there were several agencies that wanted to administer subsequent ones. Among them were the Board of Education, which submitted the proposal for the program Mrs. Reed was to head, the New York City Department of Corrections, several private trade schools, the New York State Employment Service, and a private organization which administers federal grants through a program called Group Relations Ongoing Workshops, Inc. (GROW). She also learned that every proposal has an identification number while it is processed through the various agencies. According to the Board of Education, the number for their Rikers Proposal was MT1-5157. All she had to do was follow her number to the money.

Chasing MT1-5157

Armed with this information, Mrs. Reed called several people whom she thought would either know, or be in a position to find out, what had become of the Board's proposal. Each of them did, in fact, tell her what the status was of proposal of MT1-5157. Unfortunately, each gave her a different answer.

Her first call was to the office of Senator Jacob Javits. One of his aides checked and reported that the proposal had passed through the New York State Education Office, Manpower Division, and had been forwarded with a low-priority rating to the New York Employment Service. Before Mrs. Reed could express surprise at the low-priority rating, the aide told her that according to his information, proposal MT1-5157 was GROW's and not the Board's. Mrs. Reed called the assistant director of the New York City MDT office to check on the number of her proposal. It was, he assured her, MT1-5157. She then called the director of the fiscal office at the Board. He told her the same thing, adding that the program had been budgeted for $399,000 for 360 inmates for 44 weeks. The next call was to someone else in the New York City MDT office, who told her that proposal MT1-5157 had been submitted for MDT in conjunction with GROW, but that the two had different proposal numbers, and that the MDT program would follow the GROW program, with a budget of $367,000, not $399,000. All that didn't really matter anyway, since he added that the proposal had been rejected by HEW and Labor and was undergoing revision. With the revision, came a new identification number, MT17148-7153. It is unclear whether anyone except the phantom who numbers things was aware of the change.

A few weeks after this incident, Mrs. Reed still had made no progress, and the inmates rioted. Congressman Biaggi visited Rikers and was quoted as being "shocked" to find the training facility closed. (Before running for Congress, Biaggi was a police detective lieutenant and was once Policeman of the Year, he still has an active interest in the rehabilitation of convicts.) Mrs. Reed immediately called him, and his staff began their own investigation.

Shortly after she called Biaggi, an aide to Governor Rockefeller told Mrs. Reed that, according to a letter he had from the New York State Employment Service, proposal MT1-5157 was truly from GROW, not MDT. But the people at the City Board of Education, being educators and therefore of the conviction that numbers are absolute, were not to be dissuaded and stoutly maintained that MT1-5157 was, and always would be, their number.

Soon after that, Javit's office called with the news that the New York State Employment Service had rejected the MDT proposal and that the GROW proposal had been rejected in Washington because 1) it was too

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expensive and 2) the New York City Department of Corrections had not approved it.

Biaggi's office also tried to trace the budget cuts, but made no progress. Finally, on December 15, 1970, he telegrammed Secretary of Labor James Hodgson, urging immediate approval of the Board of Education's Rikers MDT proposal. On December 17, a letter signed by Biaggi and 17 other New York City Congressmen was sent to Hodgson urging his support. On January 12, 1971, Hodgson wrote to Biaggi and said that the proposal would not be approved because of insufficient funds.

Bobbling the Buck

Biaggi then did a very clever thing. He called Hodgson's office and asked for an appointment for the entire New York City delegation to meet with him regarding the Rikers program. Rather than have a congressional sit-in, Hodgson suddenly allowed that he could release $100,000 immediately and an additional $100,000 in July.

In mid-April, 1971, however, 20 months after the facility was closed, and almost a year after the new program was to have begun, the funds still had not been released. This prompted a telegram from Biaggi to Hodgson, saying, "It certainly appears that your department is trying to frustrate this project for fiscal 1971." Two weeks later, Hodgson advised Biaggi that the funds would be released within two weeks.

In fact, on May 3 they were forwarded to the New York State Vocational Office in Albany, where they were promptly "administratively lost." A call from Biaggi on May 26 to see what had happened to them produced a two-day flurry of activity culminating in the funds' discovery. On May 28, the Rikers Island Manpower Development Training Program was almost funded for $258,932. It turned out, however, that the print shop appropriation was deleted in Washington but the funds to staff it remained intact. Instead of letting Mrs. Reed try to apply the money to approved sections of the program, the State of New York demanded that the authorization be returned to Washington so the proper cuts could be made. This, mind you, is the same New York State that constantly complains of near-bankruptcy and cries for additional revenue sharing.

Finally, Alice Reed and her 11 teachers and counselors were able to begin their program at the end of July with a budget of $213,000. Their efforts were impaired by the fact that the shop machines, being federal property, and therefore unusable without proper authorization, had been sitting as idle as the Rikers inmates for two years. Many of the machines were rusty and unusable, but only $1,000 was allotted for machine repair.

Now, 78 inmates are receiving basic education classes, as well as training in wood shop, metal fabrication, or machine shop. Such items as a $35,000 offset camera are going unused because, among others, the print shop was not refunded, and more than a third of the classrooms and shops are not being used because there is no money to staff them. Because the typing classes were not refunded, Mrs. Reed spent $350 of her own money to buy a self-teaching typing course.

Mrs. Reed is already pushing to get the program funded for next year, but after all this, who knows? What can you say about a model program that was just that, and then for two years was nonexistent? The ironic thing is that about halfway through her bureaucratic ordeal, Mrs. Reed was talking with one of Javits' staff. What would have happened, she asked, if we had lied about our success and shown that the model program had actually failed in many ways? "Well," the man replied ruefully, "since model programs remain model programs until they work well, you would have been told to change a few things around, to try harder, and then been refunded for another three years."■

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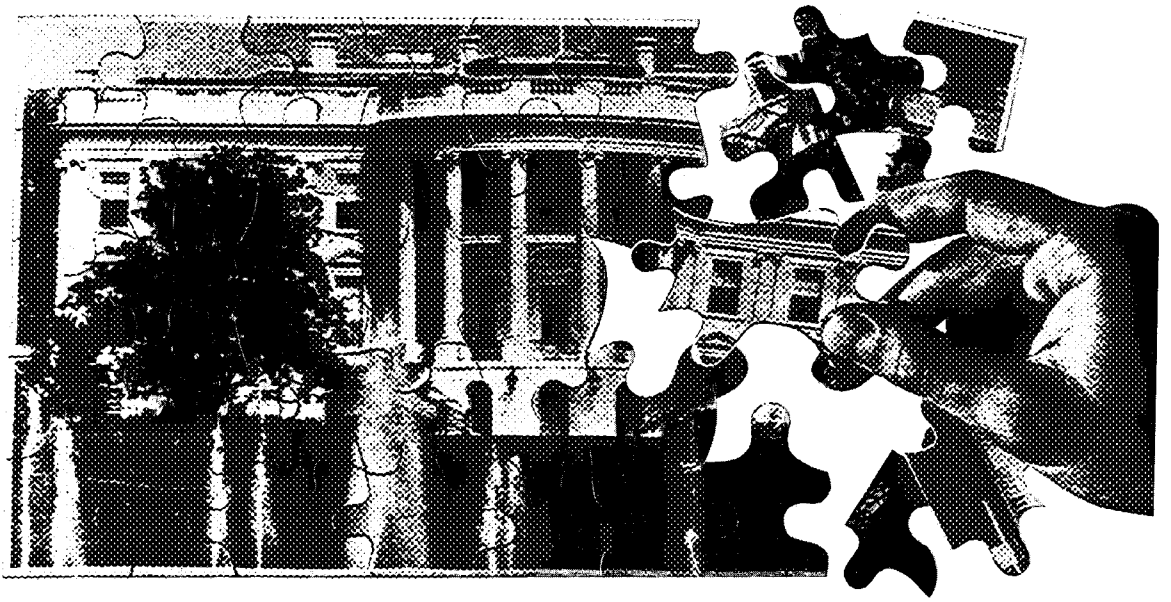

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The Billions in the White House Basement

by Timothy H. Ingram

By cliche, the power of the purse is now widely referred to as Congress' only remaining lever for redressing the balance between itself and the presidency. Increasingly, Congress is recognizing that its foreign affairs and treaty-making functions are mere ornaments, and that its traditional checks on the Executive are either unrealistic or meaningless. What is left is the appropriations power, and a handful of senators and representatives are invoking it in a muted but growing struggle to revive congressional strength.

Few appreciate, however, the extent to which even the power of the purse, that bulwark of legislative authority, is already controlled by the presidency. As Congress attempts to tame the Executive by threatening to cut off funds for things like war, it finds that the Executive has already developed innumerable devices for getting the money, anyway. And far from successfully denying the President his money, Congress is even having a hard time getting him to spend what is appropriated.

The Constitution, of course, says that the appropriations power is the exclusive prerogative of Congress. But in the vacuum created by Congressional indifference to overseeing the bureaucracy's spending habits, and by the now empty ritual of blue-penciling the President's annual budget, the Executive has amassed a mound of spending prerogatives of its own: transfer authorities, contingency funds, lump-sum appropriations, reprogrammings, special waiver authorities, and covert financing.

A look at several discretionary spending options will give some idea of the extent of the Executive's grasp of the purse strings—and some indication of what Congress is left holding. For example, through secrecy, transfer powers, mislabelled military assistance, unauthorized commitments, and cloaked grants of excess war

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goods, the President and his national security managers are able to hire mercenaries, discourage a rump insurrection in Ceylon, promise South Korea $3.5 billion, and turn over an unknown amount of equipment, helicopters, and bases to Vietnam. A simple budgetary procedure called reprogramming allows the Navy to quietly secure a behind-the-doors reversal of a congressional decision to defer production of the controversial F-14 fighter. And the pipeline, a huge reservoir of unexpended funds, permits the Pentagon to spend above the level of appropriations authorized by Congress. While lamenting the loss of its war powers, Congress consoles itself with the thought that it still maintains control over domestic priorities by its annual allotment of funds. But through impoundment, the President refuses to spend some $12 billion in appropriated monies, placing a post mortem item veto on such programs as urban renewal, regional medical clinics, food stamps, and farm loans.

The panoply of deceptive devices available to the Executive's budgetary Houdinis was graphically illustrated in a memo submitted by the Joint Chiefs of Staff to Secretary Laird on August 30,1971. According to *The New York Times*, the Joint Chiefs offered several ways of by-passing the limited military aid appropriated by Congress to generate an additional $52 million or more, to increase the strength of the Cambodian Army.

The first would be simply to transfer $52 million appropriated for economic aid to the military aid program. The second would be to use economic aid money to buy all "common use" items such as trucks and jeeps, which have military as well as civilian value, thus freeing the other funds for strictly military uses. The third would be to increase procurement for the U. S. Army by $52 million and give the materiel to the Cambodians, for "repayment" later. The fourth would be to make some exceptions in Defense Department supply regulations, declaring equip-

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ment to be "excess" and delivering it to the Cambodians.

In addition, the memo proposed, the Joint Chiefs would clandestinely provide for a mechanized brigade, an artillery brigade, and coastal patrol units, as well as ground troops and extensive logistic support. AID would help finance the paramilitary force of armed civilians, which the planners hoped would number 200,000 by mid-1973 and more than 500,000 in 1977. The CIA, with its secret budget, supposedly would help train and direct Cambodian military units, as it is now doing with Laotian and Thai troops in Laos, and would provide airlift support with its subsidized airline, Air America. The proposals represented a complete subversion of congressional authority.

But the real significance of the story was not reported: how commonplace these methods have become. The Executive devices are as widespread as they are ingenious.

Transfer Authority

The transfer authority allows a department head to shift a limited amount of funds within an agency's account. The Secretary of Defense, for instance, is permitted to shuffle up to $600 million between defense programs, and he used that authority to its fullest in fiscal 1971 with 836 transfers totaling $590 million. It can be a sensible provision for administrative flexibility. But in foreign aid, the transfer powers have been used so broadly that they have created a vast slush fund.

After convincing Congress of a crucial need for aid to a given country, the President can then turn around and use the money in an entirely different country, and for a different purpose. He can even shuffle funds from the economic aid program to military assistance, and back. Section 614 of the Foreign Assistance Act, for example, allows the President to waive requirements of the Act whenever such action is "important to the security of the United States." There were 17 such waivers between July, 1970, and October, 1971, and in none was Congress notified before the fact. One of these pumped $110 million of military aid into Cambodia following the 1970 invasion by siphoning money originally intended for Taiwan, Greece, Turkey, and Vietnam. Nixon didn't inform Congress until later that year when he asked it to replace the funds ex post facto. Another waiver was for $3 million in military aid to Ceylon, given on an *oral* authorization by the U. S. ambassador last April 10, to help Ceylon put down a leftist insurrection begun five days earlier which had captured large sections of the country. Helicopters were supplied, and within a month government forces were again in control. Congress was finally notified of the transfer on June 25.

Excess Stocks

The annual gifts of "excess" stocks of military arms and equipment have long been a Christmas bonus for a select group of foreign nations. Grants of surplus war goods are not listed as current outlays for military aid. Thus, the Departments of State and Defense were able to keep Chiang Kai-shek's forces well stocked with excess aircraft, tanks, howitzers, and M-14s, even though Congress, busily voting reductions in Taiwan's regular military assistance, believed arms shipments were being diminished. When one looks at the budget documents of 1966-1971, there is an almost dollar-for-dollar increase in handouts of excess war articles as congressional appropriations for all military aid programs were being decreased. To conceal the trajectory of this rise, the Pentagon suddenly switched from listing the acquisition cost of excess armaments to something called "utility value," a rough approximation of market value which averaged out at about one-fourth to one-third the equipment's original cost.

Estimates of the present amount of

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obsolete weapons and supplies available to Defense for military grant aid alone run well over $9 billion. (With no guidelines, it is possible to declare an almost new weapons system "excess.") Surplus weapons can also be sold through the military sales program, where credit loans come close to being donations.

The largest dispersal of military equipment—involving hundreds of millions of dollars—is in Vietnam. No one in Congress has been told the value of the vast military bases, artillery, guns, ammunition, helicopters, and supplies being turned over to South Vietnam. Some of the equipment has been given in the regular $1.8 billion in military aid funded through the Defense Department, but an unknown quantity has been given as surplus, and still more has been hidden in Defense procurement. When asked about these goings-on, J Frank Crow of the Comptroller's Office in the Pentagon replied, "Hell, man, that's my job: to lose track of it."

Secret Funds

Withholding information and wielding a "secret" stamp are the Executive's weightiest weapons. As Senator Stuart Symington told *The Atlantic* recently: "They don't tell the truth. What is driving me up the wall is what on earth are they doing with the money I am turning over. If they won't put that on the record, we might as well stay home and just send in a batch of proxies." When Executive intransigence is combined with control over the contents and structure of the budget, the visors are completely pulled. Political scientist Louis Fisher cites an estimate that in the 1972 fiscal budget of $249 billion, secret funds may amount to $15 billion to $20 billion. No one really knows, for example, in how many different ways foreign assistance is given, nor exactly how much it all adds up to. The only item in the budget clearly marked as military aid totals around $400 million. That is a gross understatement. At Joint Economic Committee hearings last January, Senator William Fulbright introduced a table showing more than $6.9 billion in military assistance and sales for fiscal 1972. Two Defense Department officials broke pencils while disagreeing with each other over the total cost, finally putting the figure at $4.9 billion and later revising it to $6.3 billion. As Senator Proxmire commented, military assistance is not an example of administrative flexibility, but complete "unmanagement," "a giant discount supermarket with no check-out counters, no cash registers, no store manager."

The Administration's policy of increased subsidization of Asians to fight Asians is highly dependent upon these loopholes, particularly as congressional opposition to the war and foreign aid heightens. Heavier reliance on the use of mercenaries is likely. Reports are circulating that foreign military men will be hired to advise the Cambodian Army, to skirt the Cooper-Church amendment, which

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bars American advisers. In 1970, Congress made it unlawful—it thought—to hire mercenaries to defend Laos and Cambodia. But the CIA continues to not so secretly recruit, train, equip, and virtually lead Thai forces in Laos. The Administration maintains that the Thais are irregular "volunteers" or "local forces." In a discussion with Undersecretary of State U. Alexis Johnson before the Senate Armed Services Committee, Senator Symington asked, "Then you believe you could recruit Cambodians and Malaysians, Australians, or anybody you felt, by calling them local forces?" Johnson replied: "If they entered the local forces. I mean if they become a part of and were a part of the local forces."

The arsenal of financial inducements available to the President to purchase foreign troops is staggering. By covertly diverting funds, the U. S. has already given South Korea at least $2.5 billion in benefits for the 50,000 troops it sent to Vietnam.

Senator Allen Ellender, the 81-year-old chairman of the Senate Appropriations Committee, was a senior member of that committee's five-man subcommittee on intelligence operations when the foreign troop arrangements were made in 1966. Ellender says he learned of the agreement, belatedly, in the newspapers. He now claims that a further quid pro quo deal has been made with South Korea. In exchange for the withdrawal of 20,000 American troops from South Korea last year, the United States has agreed to supply $1.5 billion in aid for modernization and maintenance of the Korean Army over a five-year period ending in mid-1976. In addition, according to Ellender, the U. S. not only intends to turn over to South Korea all the equipment of the withdrawn U. S. division but also some of the surplus equipment stocks left behind in Vietnam. The State Department's reply to Ellender is classified and now on file with the Senate Appropriations Committee.

Senator Ellender's own reactions to these events are most curious, and most important in terms of the future of Congress' purse strings. When asked if he would oppose the new agreement, he replied:

> What can you do? It's out of our hands. I believe in having one, strong Commander-in-Chief. Once war materiel is ordered, no member of Congress—no one—is supposed to follow through to see how it's used. It's to be used by the Commander-in-Chief as he sees best. I wouldn't want Congress to do a damned thing about it. If I were President, I wouldn't want all these "arm-chair generals" around *me*.

The Pipeline

The Treasury's largest suspense account is the enormous balance of funds which carry over each year, called unexpended authority, or more loosely, the pipeline. The question is whether this unspent balance might be tapped for purposes never intended—whether it, in effect, provides a second, hidden budget. During floor debate last October over the Symington ceiling on funds for Laos, Senator Fulbright voiced his suspicions: "I have never figured out how [Defense managers] are able to spend money that has neither been authorized nor appropriated. They have ways of drawing on unexpended funds. I imagine there is at least $50 billion of unexpended funds in the pipeline as reserve for the Pentagon. So I would not be sure that even with a prohibition against appropriation of any money, they could not find some in a very short time."

The fear had been expressed earlier during the 1969 attempt to halt the ABM when some supporters of the Cooper-Hart amendment, designed to postpone construction of the ABM for one year, doubted the amendment would actually work. Tom Halsted of Senator Alan Cranston's office, then lobbying for Council for a Livable World, recounts: "Even though Cooper-Hart specifically said none of the funds in this or any other bill shall be used for construction, there still

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was the question whether we could have gotten all those funds nailed down, or whether Defense could have built ABM sites anyway that year by grabbing carry-over funds authorized in prior sessions."

It is impossible to accurately evaluate Fulbright's and Halsted's suspicions. This is an area of the black arts, and members of the society aren't talking. However, unauthorized transfers from surplus balances have historically been a problem, and some outline of these large reserves can be sketched.

The crux of the carry-over balances is the concept of full funding. Most appropriations are annual, and revert to the Treasury if unspent at the end of the fiscal year. However, full funding—mainly used for long-term procurement and construction—generally authorizes multiple-year funds which carry over for a specified period until spent. An aircraft carrier, for example, will often be on the books for six or seven years.

The advantage of full funding is that Congress knows the full cost of a project and, theoretically, isn't faced with an agency returning every year with a higher price tag. The problem is that when negotiations fall through, or contracts are terminated, the carry-over funds continue and accumulate. Depending upon the flex in the original authorizing language, an imaginative agency can apply these old unobligated funds to new and slightly unusual purposes. Presently, the Defense Department has $43 billion in unspent authority, more than three-fifths the size of the $71-billion annual Defense budget.

The most devastating aspect of these huge reserves is that they can kill chances of both accountability and economy. For example, for the last several years, the Pentagon's yearly spending has been higher than its appropriation. In fiscal 1971 it was $3 billion more than that authorized by Congress. Congress, by focusing on yearly appropriations, never looks at the real level of outlays, and generally does not adequately review program monies authorized in previous years. This was painfully obvious when in October the Senate voted down the foreign aid bill, and it was announced that $4.7 billion—one and a half times the total in the defeated bill—was still in the aid pipeline. Supposedly this would keep aid programs going for some time, though no one on the Hill seemed to know exactly what was in the pipeline, or indeed, what a pipeline was.

Reprogramming

Reprogramming is a little-known technique which can completely circumvent the legislative process. Originally designed as a check on an agency's shifting of appropriated funds among programs, it has promoted a shell-game deferral of approved projects and substitution of new ones. With no notice given to anyone in Congress outside the participating gamesters and senior sub-

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committee members, there is simply no opportunity to learn of, let alone vote on, or object to, these moves.

Different congressional committees handle reprogramming in their own way. All that is ordinarily required is an informal clearance by four men: the relevant subcommittee chairmen of the House and Senate Appropriations committees and authorizing committees. Often, reprogramming is perfunctorily handled at the staff level by the subcommittee clerks. Sometimes congressmen are polled on the changes, and at best, a closed hearing is held.

After Congress grounded the SST, a reprogramming form was sent to Senator Robert Byrd, chairman of the Senate Appropriations Committee's transportation subcommittee, asking authority to transfer $800,000 to the SST from a Department of Transportation research contract, until termination funds for the airplane were voted. Byrd gave his okay, and then informed some of the other subcommittee members that they could go directly to the Department of Transportation if they had any objection. Senator Charles Percy, a subcommittee member, says he, for one, was not consulted, causing him, as he puts it, "some concern."

Occasionally, one of these end runs will be intercepted. Last April, Senators Walter Mondale and Clifford Case learned that the Navy planned to finance construction of a third nuclear-powered carrier by reprogramming an initial $139 million in shipbuilding funds already approved for an oil tanker and three salvage tugs. Congress had, over the previous two years, refused to provide advance procurement funds for a third Nimitz-class carrier because the Administration had not submitted a formal budget request. Mondale and Case, long-standing critics of the need for such a carrier, were alarmed that the $800-million-plus project might be approved de facto.

They raised storm warnings with Senator Ellender, chairman of the Senate Appropriations Committee, and Senator John Stennis, chairman of the Senate Armed Services Committee, both of whom agreed that for such a major project, reprogramming would be an improper procedure. Ten days later, Deputy Defense Secretary David Packard announced that the Department would abandon the reprogramming and would indefinitely postpone any formal budget request for the carrier.

No one knows how much reprogramming occurs during a given fiscal year. Office of Management and Budget (OMB) officials say they have neither the time nor the desire to standardize and record these "informal adjustments" within agencies. But Defense reprogrammings in fiscal 1971 alone involved 132 transfers totaling $3.3 billion. All but 16 were approved.

Most appropriations committee staffers and budget people feel that some reprogramming is inevitable because of the year-and-a-half or more time lag between the drawing up of program requests, passage by Congress, and eventual expenditure of funds.

But as a recent House Appropriations Committee report on Pentagon spending stated, "The volume of reprogramming is a strong indication that much defense planning is superficial and without firm foundation." "The trade-offs are significant," observes Peter Murphy of the committee's staff, "because they came before Congress saying they really needed that money for that project, and now all at once it doesn't become that high a priority, and they can just take it away when they want to replace it with another 'must have.' "

Howard Shuman, Senator Proxmire's administrative assistant, says that Senator Ellender has been "pretty good" about notifying their office of upcoming action on major weapons systems. Yet with so deceptive a procedure, no one can be sure what slips by.

In December, 1969, one read in

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the House Appropriations Committee's 1970 military budget report that the Navy was moving "too fast" in approving production of the F-14 fighter before structural tests were completed. Mindful of the C-5A and the fact that the Air Force had overhastily bought 331 F-111s—all lemons—before technical problems had been solved, the committee espoused a fly-before-you-buy policy. It slashed the requested $275 million for purchase of the first six production aircraft, and ordered that "none of the funds provided are to be utilized for tooling beyond that needed for fabrication of the test aircraft." Critics of the F-14, such as Pete Stockton, then a staffer for Rep. William Moorhead, were pleased with this minor victory.

Imagine Stockton's pulse rate upon learning at an informal Navy briefing nine months later that the plane was in production. In the interim, the Navy had gone back to Rep. George Mahon's defense subcommittee in April and, in a morning session shuffled among many other reprogramming requests, gained $517 million to build 26 production models. As is customary, no notification was given to anyone outside the subcommittee.

Impoundment

In October, Senator Lawton Chiles of Florida received complaints from the city of Jacksonville that despite the demands of its poor people it had been unable to switch from the commodity-distribution program to food stamps. The Department of Agriculture had told the city that funds were simply unavailable.

There were obvious reasons for the desire to get off the commodity program. The Senate Select Committee on Nutrition and Human Needs had only recently outlined its abuses. The commodity program's 3.5 million intended beneficiaries go once a month to a county-run warehouse to pick up whatever farmers and processors currently have in excess. Its aim is more to absorb farm surplus and keep food prices up than to feed the hungry. The result is insufficient food, nutritional imbalance, dangerous shortage conditions, and red tape. Food stamps, though flawed, at least make food accessible.

Upon inquiry, Chiles learned that not only Jacksonville, but 40 counties in Florida and several hundred areas nationwide, had been denied money already appropriated by Congress and approved by the Department of Agriculture for food stamp programs. The snare was that the President's Office of Management and Budget was impounding, or refusing to release, $200 million in funds specifically earmarked for the stamps.

Chiles further learned that a number of federal programs affecting his rural constituents were having funds withheld: research in nonchemical pest control, rural electrification, water and waste disposal grants, and $75 million in direct operating loans from the Farmers Home Administration.

Chiles took to the Senate floor on October 20, castigating the growing Executive practice of impounding or "freezing" appropriations, and warning that the President, in hatcheting a legislative program because he considers it inexpedient or inefficient, twists constitutional principles and usurps Congress' funding power. The President is exercising, Chiles continued, an unconstitutional item veto over programs he has signed into law, without the danger of being overridden by a two-thirds vote of Congress. Chiles proposed adoption of a resolution which would say, in effect, when we passed that food stamp appropriation, we meant it.

Donna Willis recounts that while working for former Congressman Arnold Olsen of Montana last year, she received a one-line telegram from a tribal chairman asking what had happened to Indian health money. It turned out that $2 million in Indian health funds had been frozen, thus cancelling immunization, contract

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care programs, and all "elective surgery" (a little medical black humor, meaning cases where there is no *immediate* threat of death), Miss Willis spent the next two weeks gathering the signatures of 90 congressmen and senators to force release of the money.

It is in this way, usually only by accident, that a member of Congress learns that money has been withheld. The OMB jealously guards its figures on impounded funds. Calls to OMB are met with evasive answers and delays—for both reporters *and* members of Congress. When Senator Sam Ervin's subcommittee on separation of powers held hearings on the impoundment question last March, it was the first time in anyone's memory that a breakdown on impounded sums had been released. Bill Goodwin, of the subcommittee staff, remarks, "We had a hell of a time. We had been after the budget bureau for three and a half years before the information was finally released."

It presents a strange situation: members of Congress, hat in hand, pressuring to have appropriated monies spent. The typical congressional complaint runs, "I had thought that once the Congress passed the appropriation bill and the President approved it and signed it and said to the country that 'This has my approval,' that the money would be used, instead of sacked up and put down in the basement somewhere." Those were the words of Lyndon Johnson, speaking as a senator, in 1959. From the vantage point of the presidency, Mr. Johnson was as free as his predecessors in putting money in the basement, stashing as much as $10 billion at one point. Since the mid-50s, Presidents have repeatedly negated programs by refusing to spend the money.

Impoundment has taken a different twist under President Nixon. In the past, it has usually been an Administration wanting to spend and a Congress not willing to appropriate. Now, with a Republican President and

a Democratic Congress, the impoundment of funds which conflict with the President's policy priorities has become more pronounced, and more routine. As of last June—when the latest figures were released by OMB—$12 billion had been frozen.

The Administration has tried to seduce Congress with a little semantic foreplay, saying that the funds are not being "impounded," but are merely being "deferred" or "put in reserve," and will be released later "when circumstances warrant." The beauty of the ploy is that, for example, $200 million appropriated for public housing for fiscal 1971 can be placed in the deep freeze, then "released" and applied to the budget request for fiscal 1972. The Administration comes out looking good both years—for having slashed $200 million in 1971, and for getting Congress to appropriate less in 1972 because of the carry-over. The added advantage of impoundment to the President is that he can quietly cripple a program

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without making embarrassing press statements. A veto is at least aboveboard, but with impoundment, as George Patten, Senator Chiles' legislative assistant, points out, "The problem is, you can't pinpoint responsibility. An agency can hide behind a budget bureau decision, or the President can veto something through the budget bureau, and then you have to play games with all three, getting the run-around."

Congress has not been totally supine. In 1970, a proviso in the hospital construction bill ordered that the entire appropriation be spent. Nixon vetoed it because of this "assault on presidential options," but he was overridden, and that mandatory spending language is on the books as precedent. The classic congressional solution in such a dispute is a little political blackmail, holding up programs the President wants. A little-noticed section of the Senate-passed foreign aid bill last November forbids expenditures abroad until the President releases urban development funds.

The strongest arm-twister is contained in Senator Sam Ervin's bill, submitted last September. It would require the President to inform Congress when he impounds funds, and why. The President would then have to release the funds after 60 days, unless Congress voted to ratify the impoundment. The bill has died quietly in committee, however, and any prospect of its passage in this, an election year, would seem farfetched, as the matter becomes one of high politics. Many observers predict the Administration will de-ice sizable portions of frozen dollars for districts with favored incumbents, and use it to coldnose others. Lobbying groups with the needed clout frankly admit they won't touch the issue.

The Nixon Administration has justified its impounding practices in two ways: through the power of apportionment and the broadest possible interpretation of the Executive power of the President.

OMB is able to lop off funds through its practice of apportioning, or setting quarterly allotments. Four times a year the OMB gives agencies a chunk of the amount Congress has granted them, in an effort to prevent agencies from spending their appropriations all in the first months and then having to return later for deficiency requests. But the apportionment process does not entail simply dividing the appropriation into four equal parts. Adjustments are made also for spending rates, inflation, and so on. More and more, such adjustments have come to be used to keep total amounts below those actually set by Congress.

The adjustments are made under the Anti-Deficiency Act of 1950, which provides that money may be reserved "to provide for contingencies," or "to effect savings whenever savings are possible through changes in requirements." The vagueness of that phrasing has provided the hook upon which to hang a defense for impound-

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ment. For example, the Administration interprets "changes in requirements" as granting broad authority to impound as a means of combating inflation.

There is no dispute about reserving, or replacing funds in the Treasury, whenever a program costs less than originally expected. But the area of dispute, as Senator Frank Church has written, is where funds are frozen not to effect marginal savings but to alter the purpose of a program or policy.

Aside from claiming broad apportionment discretion, the Administration also claims almost unlimited power over spending as a constitutional prerogative, inherent in the President's role as Chief Executive. Caspar Weinberger, Deputy Director of the OMB, said in March that a congressional appropriation was "a direction to be followed whenever it's possible to do so." He insisted that the President could not be placed in the position of automatically spending all money approved by Congress without exercising any discretion. "The President has to be more than a rubber stamp or a messenger boy running over to the Treasury," he said. Weinberger also suggested that the constitutional requirement that the President "take care that the laws be faithfully executed" could require him to withhold appropriated funds. On another occasion, when asked why the Administration was refusing to spend $10 million already appropriated for a national aquarium in Washington, he responded: "The Administration decided not to fund the project and is giving Congress another chance to consider the matter." Weinberger also readily conceded that some of the items withheld involve "policy" determinations.

Budget examiners frankly admit that programs are cut back when the appropriated amount differs from the President's budget priorities. The most blatant examples involve the attitude toward congressional add-ons. The $200 million impounded for mass transportation is almost exactly the same figure by which Congress' appropriation exceeded the President's original budget request. There has also been an across-the-board freeze on all public works projects added by Congress, even though the price-benefit ratios of some of these are higher than the ones proposed by the President.

The most forceful answer to Weinberger is a memo written in 1969 by then-Assistant Attorney General William Rehnquist, of the Office of Legal Counsel. In Rehnquist's words: "With respect to the suggestion that the President has a constitutional power to decline to spend appropriated funds, we must conclude that existence of such a broad power is supported by neither reason nor precedent." Further, he wrote: "It may be argued that the spending of money is inherently an executive function, but the execution of any law is, by definition, an executive function, and it seems an anomalous proposition that because the Executive branch is bound to execute the laws, it is free to decline to execute them."

The Snatched Purse

No gentlemen's approach is going to settle many of the issues dividing Congress and the President. It's a question of power—and the will to use it. The Executive, of course, chooses to depict the struggle as between its visionary managers and the small and self-serving politicians in Congress. When Caspar Weinberger appeared before Rep. Joe Evins' subcommittee on public works to explain the impoundment of all the congressional add-ons (a term that itself illustrates Congress' back-seat role), he said:

> There is no one in Congress who has the opportunity at any given point to see the overall effect of what a particular appropriation bill is going to do to the whole budget. That is our job and we have to do it, and we have that opportunity, or vantage point, if you like, all the time. Congress, because it considers 13 or 14 separate appropriation bills, can t have that.

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Congress does its part to conform to this picture of its limitations. Under the present system, nowhere is there coordination or overall budgetary review, nowhere can the final spending total of all the individual appropriations bills be examined, and nowhere can competing or contradictory programs in different agencies be compared.

Furthermore, Congress' habit of being late in passing its money bills allows a jungle of evasive processes to grow by necessity. Informal deals between committee clerks and harried agency officials, not knowing what their allowances will be, supersede both statute and Executive discipline. To some degree at least, the Executive has been forced to make its own law by default, while congressmen have been unwilling to give up any of their personal power to the large staffs that would be necessary to do an adequate policing job on the budget. Beefed-up staffing, however, would be largely inconsequential as long as the presidency follows its "need not to know" policy, keeping the most basic of information locked away in agency files.

Congress has not helped itself any by the way it has chosen to attack the growing presidential prerogatives. Mostly, the legislators have attacked such tactics as impoundment only to save a pet project, and often one of questionable worth. There are legendary stories about the abilities of subcommittee chairmen like Jamie Whitten to go to the source of authority and bargain—often continuing a program that everybody else wants killed.

And so much of the congressional reaction to presidential purse-snatching depends not on the vagaries of Executive power and constitutional rights, but rather on the practical question of what is being stopped or what is being continued. Pentagon critics don't say much about the $1.3 billion in frozen military construction funds, even though in cutting them the President is ignoring Congress just as surely as he is in hiring mercenary soldiers. Nor did these critics intervene when President Kennedy sat on funds for the B-70 bomber. Conservatives like Rep. Charles Bennett of Florida condemned the "Louis XIV decision" of the President to block spending on the cross-Florida barge canal, while conservationist legislators did not voice their constitutional objections. Senator Charles Percy approves the deferring of public works and highway construction, always one of the principal victims of impoundment. At the same time, he says of welfare measures: "I would be very concerned if a program authorized and funded by Congress in the area of school lunches, nutrition for the elderly, education—if those were items not expended by the Administration. *There*, it's a question of whether the intention and desire of Congress as the elected representatives of the people is frustrated."

It would be very hard to find any congressional agreement over where to

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place Senator Percy's "there," but then, most legislators, like the rest of us, are more concerned with results than with procedures. It is hard not to agree with Senator Percy, who can give up a little congressional power to stop the highways, but can find such a loss unacceptable when it comes to food stamps.

That leaves us with an inconsistent, unprepared, and sometimes petty Congress on one side of accountability. On the other side stands the Executive, in the view of Weinberger and others, the only branch with a dispassionate overview, and with sufficient expertise to bring coherence out of congressional chaos. It is such a vision of omniscience and efficiency that the Executive hopes will override any worries over lost principle or tradition, or any strict constitutional interpretations about congressional power. In defending its practices, the Executive appeals pragmatically to its superior machinery which produces superior results.

All this, however, ignores the fact that even the Executive budget managers are becoming increasingly political and tied to their own petty concerns. As power moves from Capitol Hill to the Executive, so moves the politics. The changes can be seen in the Office of Management and Budget, the new agency resulting from Nixon's reshuffle of the Bureau of the Budget.

To some degree, the budget bureau has always been a fiscal Swiss Guard —"the President's arm," one is repeatedly told by budget employees. Examiners are keenly aware that they are within an earshot of the President, and make cost decisions within a framework of what they conceive as the President's bidding. And Nixon's reorganization, which edged out the top civil servants, was an effort to place even more control of the budget process in the hands of presidential appointees, making OMB a direct political extension of the White House.

This issue, then, is not one of cold efficiency versus bumbling democracy, but rather one of the relationship between two political contestants. If we have to decide between the Executive or Congress for control of the budget, it is certain that the congressional shortcomings cured by Executive lawlessness are far outnumbered by the disasters wrought by Executive lawlessness itself. If we had to give up the benefits of the President illegally holding up the highway trust money to stop the illegal war and defense funding, the bargain would probably be worth it.

But while the fight over the Constitution and the balance of powers is often presented as a case of taking one branch or the other, a choice may not be necessary. Restoring the purse strings to Congress does not mean that all the power will revert to Capitol Hill—things are too far gone for that. It does mean that at least a battle will be resumed, a battle which might limit the excesses of each side. It is such a hope on which the principle of accountability rests.

The Executive's increased control of government spending, then, is not so much a matter of the President overpowering the Congress, but rather that he is putting less and less power on the line to get what he wants. The old struggles over the budget, the veto, and the override are circumvented by all the techniques that have been described. When Nixon refers to Congress' growing demands that its appropriations laws be followed as "congressional games" he means not so much that they are frivolous, but that they are irrelevant.

It is here that the issue now stands. Congress can still play rough, if it wants to. It can threaten fund cutoffs, mandate the use of funds as directed, and exercise its oversight function. But as the Executive detours proliferate, Congress discovers that its problems go beyond relative weakness. Increasingly, Congress is less the underdog and more the old fighter who is no longer even invited into the ring.■

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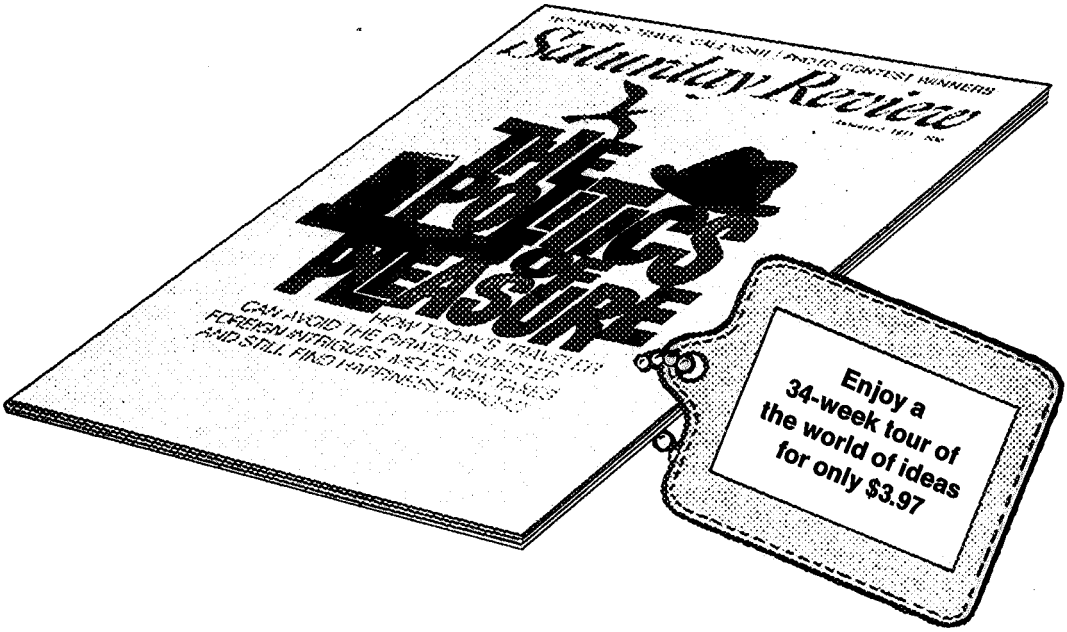

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POLITICAL NUMBERS:

Jobs: Get 'Em Where They Ain't

by Michael Rappeport

All indications are that some drastic changes in the American job market are being ignored by government policymakers who hope to revive the sagging economy and put people back to work. Creating more jobs is an Administration priority, and yet, while all the numbers show a relative decline in manufacturing and goods-producing jobs, the planners continue to act as if the nation's economic future will be decided on the assembly lines.

The last few years have seen marked growth in the services sector of the economy—with legions of new retail clerks, consultants, programmers and teachers. Yet the government emphasizes assembly-line skills in its manpower training programs, spewing out thousands of people trained for jobs that may not exist. While the goods-producing sectors take up less and less of the total economy, the government continues to hope to produce jobs by relying on investment tax credits and other incentives to production industries.

It is surprising that so few Americans seem to know much about these changes in the labor force. Perhaps it is because the economists themselves seldom direct their attentions away from the niceties of the money supply long enough to note the convulsions in the job market. Their inattention is clearly reflected in the attitudes of the policymakers.

The changes nonetheless don't disappear. Table I shows a breakdown of American payroll jobs by general industry category since World War II.

Michael Rappeport is Director of Statistical Services at Opinion Research Corporation in Princeton, N. J. This article uses ORC research; the opinions are solely the author's.

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The figures are five-year averages, smoothing out some of the more extreme year-to-year fluctuations, especially those involved with the build-ups for Korea and Vietnam. The goods-producing category encompasses mining, construction, manufacturing, communications, transportation, and utilities. Three different service areas are shown: trade (wholesale and retail), services (including finance, real estate, and insurance), and government (local, state, and federal). Twenty years ago, there were roughly an equal number of goods and service jobs. Today, there are 50 per cent more service jobs than goods jobs. And the gap continues to widen in favor of the white collar.

Table II shows figures on the other side of the coin: the growth in the labor force. As the postwar baby boom has come of age this figure has increased dramatically. Moreover, for the past year the civilian labor force has grown at a much faster rate than the total labor force as fewer young men are "employed" by the military.

As jobs become harder to find, many Americans become, or at least call themselves, self-employed. This sharp increase in the number of self-employed (against long-term trends), appears to be a kind of hidden unemployment or perhaps underemployment. Finally, there has been a 0.3 per cent decline in the labor force participation rate relative to established trends—meaning that about 520,000 people have simply not bothered to register themselves as actively seeking work and are thus not counted among the unemployed. This produces a kind of masked unemployment.

Taken together, the figures say some interesting things about both the short-run and long-run nature of unemployment. In the short run, say by September, 1972, somewhere between 1.3 and 2.9 million non-agricultural

Table I

POST WAR JOBS BY INDUSTRY CATEGORY

Average During	Goods	Trade	Services	Government	Agriculture
1947–1951	22.8	9.3	7.2	5.9	7.4
1952–1956	24.7	10.4	8.3	6.8	6.3
1957–1961	24.2	11.1	9.8	8.1	5.6
1962–1966	25.4	12.3	11.7	9.7	4.5
1967–1971*	27.9	14.5	14.6	12.2	3.6

All figures in millions of jobs.
* Through September

Table II

LABOR FORCE CHANGE PER YEAR

	Total Labor Force	Civilian Labor Force	Self–Employed
From 1947–51 To 1967–71	1050	979	79
From 1962–66 To 1967–71*	1601	1505	323
1969 to 1970	1663	1981	537
Sept. 1970 to Sept. 1971	1229	1589	763

All figures in thousands of people per year.
* Through September

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jobs must be created just to keep unemployment at its September, 1971, rate of 6.0 per cent. The low figure assumes no decrease in the military, another decrease of 0.3 per cent in the participation rate, and 750,000 additional "self-employed" workers. The upper figure assumes another 300,000 drop in the military and no changes in participation rates or in the self-employed.

Regardless of the figure uesd, it is highly unlikely that the goods-producing areas alone can provide the required number of jobs, let alone cut into the unemployment rate. Only twice, in the peak build-up years for Korea and Vietnam, have more than a million goods jobs been created in a year. In the long run, the figures seem unequivocal. Barring a total reverse in past trends, the new jobs must come from the service side.

If anything like the upper figure applies, investment tax credits are only a beginning. Every possible service job will be required. In this respect, the average yearly gain in government jobs has been about 400,000 with a heavy increase in teaching. The current tight budgets and job freezes, particularly at local levels, bring added barriers to the creation of more of these jobs.

By ignoring these trends, policymakers short-change several major groups in many important ways. For instance, while three of five workers are in service industries, all five labor members of the Price and Wage Board represent goods-producing unions. And while wholesale and retail trade employs one in five working Americans, not one of the 22 Board members has any connection with trade. Other labor groups fare almost as badly. Only ex-Governor Scranton has any direct experience with state or local government, which employs about one in six workers.

One might conclude, "Such is the price of not being organized," but retail clerks, teachers, and a variety of other groups might disagree. ■

Arthur J. Goldberg

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Why Mayors Go Nowhere

by Theodore J. Lowi

New York mayors come from anywhere and go nowhere."

To many old mayor-watchers, the Iron Law of New York mayors is known as Sayre's Law, after its framer, Wallace S. Sayre, professor of government at Columbia University and one of New York's most astute political analysts.

Sayre's Law also makes Sayre an important author of puzzles and conundrums. How else could such a law hold for America's largest, richest, and most cultured city? New York City is the most important source of campaign money for all national elections, all New York state elections, and for a great many local elections all over the country. The state has sent the largest delegations to most of the presidential nominating conventions of both parties and has presented to one party or the other the largest single bloc of electoral votes in the presidential elections. Yet New York City's top political figure looks into this from the outside, despite the fact that the city offers at least half these prizes and has at times appeared to hold the national balance of power.

These further political attractions have not gone unrecognized. Many local New York leaders have enjoyed national and state power. National committeemen from New York City are usually major figures at the conventions, proving that some obscure New York pols come from nowhere and actually go somewhere. Thomas Dewey and Al Smith, Carmine DeSapio and Ed Flynn are examples of

Theodore Lowi teaches political science at the University of Chicago. This year he is a visiting professor at the University of North Carolina.

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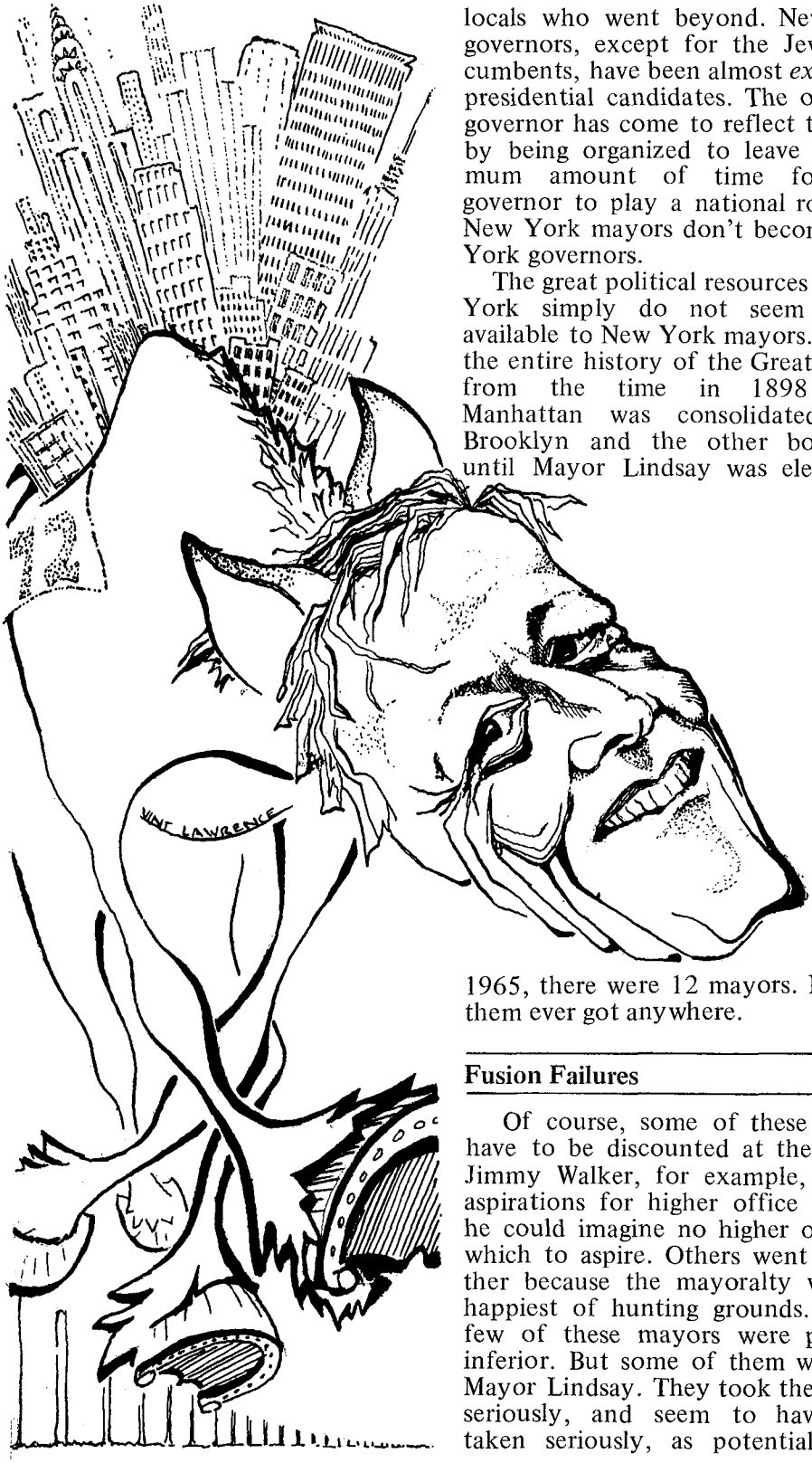

locals who went beyond. New York governors, except for the Jewish incumbents, have been almost *ex officio* presidential candidates. The office of governor has come to reflect this fact by being organized to leave a maximum amount of time for each governor to play a national role. But New York mayors don't become New York governors.

The great political resources of New York simply do not seem to be available to New York mayors. During the entire history of the Greater City, from the time in 1898 when Manhattan was consolidated with Brooklyn and the other boroughs, until Mayor Lindsay was elected in 1965, there were 12 mayors. None of them ever got anywhere.

Fusion Failures

Of course, some of these mayors have to be discounted at the outset. Jimmy Walker, for example, had no aspirations for higher office because he could imagine no higher office to which to aspire. Others went no farther because the mayoralty was the happiest of hunting grounds. And a few of these mayors were patently inferior. But some of them were like Mayor Lindsay. They took themselves seriously, and seem to have been taken seriously, as potential candi-

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dates for President, Vice President, senator, or governor, or at least attorney general, appeals court judge, even state comptroller. And none of them ever succeeded.

Mayor George B. McClellan (1904-1910) was the first of the heavier weights. Young, handsome, effective in office, he was also one of those rare mayors who actually came from somewhere. His father was Lincoln's General McClellan, and the son himself served with some distinction in Congress for nine years prior to his election as mayor. Yet, after six years in the mayoralty, he was politically dead. McClellan had been a regular Tammany nominee—one of those respectables the party always trotted out whenever Reform was knocking at the door. In his effort to run the office so as to attract a still larger constituency, McClellan lost Tammany and he was also unable to build his own political future. On the other hand, if he had kept Tammany and the city constituency happy, he would never have had a prayer of larger, state-wide support anyway. As mayor, he was damned if he did and damned if he didn't.

Thanks largely to Mayor McClellan's independence, Tammany lost control of the mayoralty for 16 years. But the effect of the mayoralty on mayors remained the same. Mayor Gaynor (1910-1914) was a Brooklyn Democrat who came to office with a reputation for irregularity and independence. There was some discussion of Gaynor as a vice-presidential candidate, but scandals in the party, coupled with his own poor health, precluded consideration for any future post, including the mayoralty itself. While a judge in Brooklyn, he had almost made his permanent mark by enjoining Mayor McClellan from implementing the first traffic laws, on the grounds that they infringed on the constitutional rights of individuals. In the end, his only lasting contribution was clearing the way for four years of Fusion, the hallowed name taken by the Reform Movement in New York on those rare occasions when reformers can get together long enough to run a candidate. This is usually in tenuous association with the Republican Party.

Mayor Hylan (1918-1926), a Brooklyn Democratic regular who followed Fusion, had many qualities worthy of being taken seriously for higher office. He may be remembered mainly for his famous letter to the Civil Service Reform Association, in which he said, "We have had all the reform that we want in the city for some time to come." But actually, Hylan instituted several important and lasting improvements in city government, including the establishment of the Budget Bureau, the Purchasing Department, and the principle that Democratic administrations would adhere to civil service rules and regulations. Hylan was a victim of the 1922 breakup of the entente involving Boss Murphy of Tammany, Boss McCooey of Brooklyn, and William Randolph Hearst. Thereafter, Hylan's political support was insufficient for any office.

Sandwiched between these two Brooklyn products (1914-1918) is the mayor who might have permanently amended the Iron Law. John Purroy Mitchel was the perfect Fusion mayor. While still in his twenties, he had proven his capability and effectiveness as leader of the reform forces under Mayor McClellan. In his politics, he is a close parallel to Mayor Lindsay. An independent and a Democrat, he was generally acceptable to all enlightened elements in the liberal wings of both political parties. Like Lindsay, he split from the Republican organization after one term, and after losing in a three-way race for reelection (the big issue was the war, of which he was a supporter), he found himself an attractive number to the Democratic left, the Wilson progressives.

Mayor Mitchel, however, never had a chance to test the Iron Law. He joined with LaGuardia and many other young romantics to help build the World War I Air Force and in

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1918 was killed in training.

Jimmy Walker was the last of the old types who could view City Hall as the be-all and end-all. His ambition was no threat to anyone. He only wanted to be universally loved, and his tragedy was not the corruptness of his administration, but only its tardiness. Walker should have served in times when the city needed only ceremonial functions in the mayoralty. Growth, Depression, and Repeal had transformed the office of mayor.

LaGuardia's Driveway

Fiorello LaGuardia (1934-1946) was the first of the modern mayors. He was a true urban politician, but was oriented toward issues and offices larger than the city's. He harbored appropriately large political ambitions, and to that end he had planned carefully and long. After being dumped in the usual fashion by the Republican organization after one term of Fusion, LaGuardia was reelected in 1937, and turned immediately, if secretly, to the Democrats. (LaGuardia remained a Republican simply by virtue of the fact that he walloped the regular candidate in the 1937 primary.) In order to escape the city, LaGuardia sought an alliance with Boss Ed Flynn of the Bronx for the purpose of getting Flynn's support for the Democratic nomination to fill the Senate seat of Royal Copeland, the conservative Democrat put up by the regular Republicans against LaGuardia in the 1937 primary.

LaGuardia might have found the loophole, but something always seemed to close it off. This time it was the "paving block scandal" of late 1941, the only issue of corruption ever associated directly with the name of Ed Flynn. LaGuardia tried for weeks to keep the lid on the scandal but was foiled by his own Civil Service Commissioners, whose dedication to LaGuardia's ethic of reform impelled them to reveal that sanitation workers had been sent to Flynn's home on a weekend to surprise the Boss with a new driveway.

The failure of this alliance doomed LaGuardia to a third term in the mayoralty. He made the best of it, of course, as any aristocrat makes the best of an arranged marriage. LaGuardia's mistresses were the comic strips and, for relief, civil defense and five-alarm fires. His successors, Mayors O'Dwyer and Impelliteri, were not even as fortunate as that.

Fighting Bob Wagner, by garnering the 1956 Senate nomination, provides the sole exception to the regular fate of New York mayors. But this is an exception that proves the rule in at least two ways. First, Wagner was the only mayor with an established political family, one with a prefabricated state-wide constituency built by his famous senator father. Second, he got only as far as the nomination, and in accepting it, he probably lost far more than he gained. Without the Eisenhower landslide he might have been elected, but in any case the politics of getting the nomination set in train a series of developments that ended in ruination for Wagner's political career and for the remains of the Democratic party in New York City and state. The results can be seen in Wagner's second term, 1958-62, which produced an abominable stalemate in city government and cracked the popular base Wagner had once used and strengthened. In order to win his third term, Wagner was led to an unholy marriage-of-desperation with the top labor unions and largest city bureaucracies. Thus, in going hell-bent after the larger constituency, Wagner almost completely disoriented the political system of the city.

New York City is only one, albeit significant, example of a general phenomenon. All over the country big-city mayoralties seem to possess the seeds of their own destruction. If the mayoralty is so generally a dead end, there has to be some explanation.

The immediate question is whether the mayoralty simply attracts inferior politicians. That is, perhaps mayors do not *deserve* to go anywhere. In a sense

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that is true, but only because it is true of almost all politicians. Politics is an artificial way of increasing a person's self-esteem or padding his pocketbook. The public good, which indeed is often served, is nonetheless incidental to political ambition, just as the "wealth of nations" is incidental to the entrepreneur's lust for riches. We suffer our politicians until they reach high office, then, thanks largely to the status of the office, we forgive them their sins and honor their services. Mayors are politicians, but as a class within the general species *politician* they don't deserve the booby prize.

To look at the same thing another way, one can compare former mayors to district attorneys, sheriffs, county clerks, surrogates, congressmen, and state senators in any state in the union and not be able to explain in terms of personal qualifications the failure of the mayors and the success of all the other types in reaching higher office. Since 1832, when presidential nominating conventions began, there have been 45 "first-time" nominees for President and 56 for Vice President. Among these, there were no former big-city mayors. In fact, no former mayor ever polled more than three per cent of the Republican delegates; only three former mayors ever exceeded three per cent of the delegate votes in Democratic conventions. Meanwhile, we have nominated many former generals and businessmen, numerous senators and governors, many former district attorneys, and the like. The same holds true for the governorship and other major state offices.

Inferiority, then, won't explain why the big-city mayoralty is a dead end. It all leads back to the original puzzle: What lies at the bottom of the paradox of vast political resources that "top out" just above the intersection of the Hudson and Harlem Rivers?

The only meaningful explanation is gloomy counsel for Mayor Lindsay. Worse, if the explanation is correct, it means that the great cities in the United States may never have the national political influence proportionate to their importance.

There seems to be a discontinuity between city government and state government. It is as though the two were former colonies trying to live as states under the Articles of Confederation. Authority over the city that rightfully belongs to the state is rarely exercised and is usually accepted only on pain of great financial need or threat of great financial punishment. Cooperation between the two levels of government is even more rare, because cooperation must be voluntary. This discontinuity has been the cause of electoral antagonisms between city and "upstate," which, once established, have furthered the conflicts.

The discontinuity is even more curious because it seems to be limited to city and state executive offices and not to other offices and functions. There are many examples of state-county cooperation; and there are many examples of city and county officials other than mayors who have gone on to higher office. Statewide tickets frequently include former city council presidents and local district attorneys, judges, congressmen, and state senators. The antinomy seems to be precisely governmental. The relationship between the city and state governments comes to what students of strategy call a zero-sum game. What is gain for the city is treated as loss by the state, and conversely.

This relationship of opposites between governments was dramatically portrayed by the break between Mayor Lindsay and Governor Rockefeller. But it goes deeper than that. City and state agencies tend to distrust each other, even in matters of welfare, police, pollution control, and transportation, where there is legal obligation as well as rational imperative for cooperation. The city and state university systems are overlapping and tied to the same fate, but different criteria apply to them, different functions are heaped upon them without regard to any central

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considerations. City youth are partially cordoned off from state institutions by secret quotas, etc.; and the city is supposed to massify its student body while the state looks toward differentiation among its campuses. The state fears to get involved in the city, much as a patient with a gangrenous limb might pretend it doesn't belong to him. The city, in its turn, retains a full-time lobbying operation in Albany, and is treated as though the city were just one more pressure group.

Thus the Iron Law is a mere indication of the more general affliction, not its cause, not even its most important symptom. This affliction, the zero-sum game between governmental adversaries, is incentive throughout the state and city for narrow perspectives in policy formulation and execution.

The Small and Narrow

During the 19th century and on into the 20th, city governments, including New York's, did nothing but hand out privileges—jobs, franchises, and information. All the important laws were made by the state legislature, including the essential penal, health, and property laws administered by city agencies and courts. Under those conditions there was little need for strong continuity between levels of government. Governments developed separately, political organizations and traditions developed separately, separate loyalties and outlooks bred jealousy and mistrust. State officials often intervened unwisely, which overshadowed the more frequent instances of wise intervention against an unbelievably corrupt city system. Eventually the cities, especially New York after Consolidation in 1898, began to add more of the essential governmental functions —education, welfare, planning, transit —and with that came a more active discomfort with state government.

This discomfort led to increasing pressure for home rule. But home rule was no solution; it was only an early expression of systematic distrust between governments in the same state. Home rule expressed the fact that it was no longer possible for city and state to exist in relation to each other.

When, during the epoch of the Articles of Confederation, the states discovered that their relations were frazzled, they turned to greater unity, they agreed that the solution required giving up a little sovereignty. New York City and state have, to the contrary, kept operating as though continued, and more, separation were possible.

Consequently, New York City is a Jacob's Ladder, cut off at the top by the antagonism and distrust of its own historic autonomy, and cut off from the bottom by its own effort to govern by irresponsible bureaucracies and sterile legislatures. This is a fractured system, a system that is not a system at all.

Little but irrationality can come of it. It is a big city that is the enemy of big-thinking. All of the rewards in the system go to those with narrow minds; all the punishments are heaped upon the most ambitious, the most courageous. Mayor Lindsay began losing the GOP and his hope for state-wide political support proportionately as he came to recognize that the answer to New York's problems might be in Vietnam and Washington. The city produces small minds and rewards narrow perspectives. It punishes great ambition by providing no institutions through which it can express itself.

Worse still, the system produces irrationalities among the best and biggest minds on those rare occasions when courage overcomes fear. Mayor Lindsay probably comes as close as any mayor in New York's history, or in the history of any other city, to a national thinker; but in trying to find a way to govern this fractured system, while at the same time trying to find an opening to his own political future, he has become a vigorous proponent of more home rule, more separation of city and state. This is a cure that

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possesses all the wisdom of the medieval physician who proposed bleeding at the very time the patient needed all the blood he had.

The Mayor's Loophole

The urge for separation is understandable, but it would be meaningful only if the state government were the malefactor. That is patently not the truth of the matter. For many reasons, the city has become its own worst enemy. The city cannot govern itself because, to gain efficiency, it has cut its functions up into bureaucracies where officials detest new problems whose definition extends beyond agency boundaries. The city cannot govern itself because the main sources of its problems are beyond the boundaries and the power of the city.

Lindsay may find his loophole, though that is unlikely. Going Democratic and national may leapfrog the state barriers to the presidency. Yet who can hope to be a major contender if he goes to the convention without the solid support of his own state delegation? Perhaps the Mayor's only chance is to follow the Nixon pattern and move to the opposite coast. If he finds the loophole, it will be due to factors of an extraordinarily personal kind. The system that tends to close off all the loopholes would remain.

Since the fate of New York mayors and the capacity of New York for self-government are tied together, they will stay or improve together. Specifically, if discontinuity punishes mayors in direct proportion to their best and boldest ambitions, then the cure lies in continuity, not in more discontinuity. There must be an uninterrupted flow of decision-making, a governmental capacity to move its powers and resources quickly toward where the new problems are, regardless of pre-existing political boundaries. (It is often forgotten that under our Constitution, all local principalities and agencies are mere creatures of the state and enjoy only those powers granted ultimately by the state.)

Such a flow of decision-making capacity would in turn create a single political market, available without prejudice to the largest of ambitions. If the city were returned to its original constitutional status, as a subordinate unit of state government, it would provide choice among all shapes and forms of government. For certain purposes, the conventional city is the right unit. For others, units of much smaller size are better; for many other problems, units that cut across existing city boundaries would be better. Only the state has the perspective and the constitutional right to make that choice, and if the right were exercised we would quickly witness greater governmental capacity plus the emergence of a more systematic means of dispensing political rewards according to the scale of ambition and the boldness of ideas. The success of district attorneys, which is due to the continuity of the judicial process, begins to suggest the political advantages to city populations if their governments were less of a closed system than they are today.

Some will continue to favor increased home rule despite its failure because they hold state government in such low esteem. But state government does not always deserve the low reputation it has. We simply have not looked at it objectively enough lately. In any event, the continuing crisis of the cities should suggest that we have little to lose by trying state government once more. We may gain.

Giving up local autonomy seems to be the only sure loophole through which the ambitions of the best mayors can be served in consonance with the needs of New York City government. If that is the loophole in the Iron Law, should Mayor Lindsay be punished for not having found it? Should he suffer any less than his predecessors? Or should he be punished more severely for not having learned anything from the woes of his predecessors? Probably not. In the arts of government, there is no Iron Law of Progress. ■

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POLITICAL BOOK NOTES

This section lists public affairs books scheduled for publication this month. Publishers who want descriptions of their books included should notify us two months in advance and provide a brief (50 words or less) objective summary of the contents.

After the Planners. Robert Goodman. Simon & Schuster, $6.95.

America Encounters India. 1941-1947. Gary R. Hess. Johns Hopkins, $9.50.
In relating the events surrounding America's initial unfavorable response to nationalism in Asia, and India in particular, Hess attempts to provide new insight into America's subsequent promises and frustrations in dealing with emerging peoples.

American City Planning. Mel Scott. University of California, $7.95.
Describes the political events, persons, institutions, and legislation which comprise the story of American planning since 1890, with focus on the intellectual history of planning.

The Arnheiter Affair. Neil Sheehan. Random House, $7.95.

The Atrocity of Education. Arthur Pearl. E. P. Dutton, $9.95.
Pearl contends that our educational system fails because the genuine needs of our society have not been spelled out. He describes recent attempts to upgrade what he feels is an obsolescent system and offers proposals for change.

The Biological Imperatives: Health, Politics and Human Survival. Allan Chase. Holt, Rinehart & Winston, $8.95.

The Blackstone Rangers. Richard Sale. Random House, $6.95.

Brownout and Slow-Down. Richard Saltonstall, Jr. and James K. Page, Jr. Walker, $5.95.
A discussion of the facts and arguments surrounding the twin environmental crises—energy and transportation.

Cold War and Counterrevolution: The Foreign Policy of John F. Kennedy. Richard J. Walton. Viking, $7.95.
Walton describes JFK as a man of grace, courage, and intelligent liberalism whose actual words and acts were those of a cold warrior whose anti-communist impulses prevailed over genuine idealism and sympathy for oppressed peoples.

Confessions of a Stockbroker. Brutus. Little, Brown, $6.95.

The Constitution in Crisis Times, 1918-1969. Paul L. Murphy. Harper & Row, $7.95.

Dear Congressman Howard:. Kathleen Lyons. Acropolis, $4.95, $2.95.
A citizens' how-to book for affecting the workings of government

The Decline of the WASP. Peter Schrag. Simon & Schuster, $6.95.

Design for the Real World: Human Ecology and Social Change. Victor Papanek. Pantheon, $8.95.
A blueprint for survival and an indictment of the industrial design establishment.

Down to Now: Reflections on the Southern Civil Rights Movements. Pat Watters. Pantheon, $7.95.
A personal account of the civil rights struggle—from the first sit-ins to Resurrection City—by the information director of the Southern Regional Council.

The Ecology of the Public Schools: An Inquiry into Community Control. Leonard J. Fein. Pegasus, $6, $1.95.
Explores the implications of community control of schools and the intentions of its advocates and its bearing on the understanding of society and democratic politics.

Economic Imperialism: A Book of Readings. Kenneth E. Boulding and Tapan Mukerjee, ed. University of Michigan, $10, $3.95.
Fifteen essays on the economics of imperialism, including writings by Hobson, Schumpeter, and Bronfenbrenner.

Equal Justice: The Warren Era of the Supreme Court. Arthur J. Goldberg. Northwestern University, $4.50.
Former Justice Goldberg reflects on the achievements of the Supreme Court under

Analysis of the USSR's
24th Party Congress
and
9th Five-Year Plan

Norton T. Dodge, Editor Cremona Foundation
Mechanicsville, Md.

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Chief Justice Warren and the extent to which he feels it attempted to make law respond to human reality. He also discusses the future of the Supreme Court as an institution.

Essence of Decision: Explaining the Cuban Missile Crisis. Graham T. Allison. Little, Brown, $8.95.
What happened, why it happened, and how this specific crisis relates to American decision-making in general. Allison also examines the U. S. policymaking process as a whole, and the basic logic and assumptions American analysts use in explaining or planning governmental actions.

The Forging of the American Empire. Sidney Lens. T. Y. Crowell, $10.
Argues that a "benevolent" America has never existed and attempts to demonstrate that from its earliest days the United States has followed an urge to expansion and empire at the expense of other peoples.

The Future of Indochina: A Political Assessment. Joseph Zasloff and Allan Goodman, ed., D. C. Heath, $10.
An analysis of the future of Indochina in the light of declining U.S. influence and increasing demand by Southeast Asians for greater independence.

Games Nations Play: Analyzing International Politics. John W. Spanier. Praeger, $10, $5.95.
A survey of post-World War II politics. Chapters dealing with power, coercion, deterrence, the alliance system, the role and powers of the Third World and Europe.

Letters from Attica. Samuel Melville, fwd. by William Kunstler. Morrow, $5.95.
The personal letters of Samuel Melville, leader of the Attica rebellion killed in the police assault, written while he was in the Tombs, Sing Sing, and Attica.

The Politics of Consumer Protection. Mark Nadel. Bobbs-Merrill, $8.50, $3.95.
A history and examination of consumer protection legislation and its relation to patterns of decision-making and political power in Congress and the federal bureaucracy.

Reinhold Niebuhr: Prophet to Politicians. Ronald H. Stone. Abingdon, $8.
An analysis of Niebuhr's writings, centering on his work as a political philosopher and moralist, especially in the field of international politics.

Report from Engine Co. 82. Dennis E. Smith. McCall, $5.95.
A view of a New York tenement district through the eyes of a fireman, who takes the reader along as his company answers alarms.

Transnational Relations and World Politics

Robert O. Keohane and Joseph S. Nye, Jr., editors

Rejecting the traditional view of world politics as simply interstate politics, the editors argue for an examination of transnational processes and their role in international affairs. In this volume of essays political scientists, economists, historians, and sociologists look at aspects of world politics in which states are not utterly dominant—that is, at transnational relations. The essays cover several types of transnational actors: (1) multinational enterprise, the Ford Foundation, racial minorities; (2) different fields in which transnational processes occur; and (3) the effects of these relations on peace, American foreign policy and international organizations. Cloth: $12.50. Paper: $4.95.

Center for International Affairs

Also available from Harvard University Press: REGIONAL INTEGRATION: Theory and Research, edited by Leon N. Lindberg and Stuart A. Scheingold. Cloth: $12.50, Paper: $4.95

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The Rise of Teamster Power in the West. Donald Garnel. University of California, $12.50.
The growth and development of the Teamsters Union, and particularly the highway drivers organized and led by Dave Beck, during the period prior to World War II.

Right to Challenge: People and Power in the Steelworkers Union. John Herling. Harper & Row, $15.

The South Moves North. Robert Coles. Atlantic Monthly Press, $12.50.
The third volume in Coles' social history series covers the problems of black and white immigrants in the northern ghettos.

Student Activism in Historical Perspective. Alexander DeConde. Scribner's, $10, $3.65.
A collection of readings built on the premise that the world-wide youth rebellion of the 1960s had its roots in the past.

Theory of Public Choice: Political Applications of Economics. James M. Buchanan and Robert D. Tollison, ed. University of Michigan, $15.
An explanation of the methodology and specific applications of the "theory of public choice" to the military draft, the control of monopoly, socialized medical care, the fiscal-monetary mix.

Transnational Relations and World Politics. Robert O. Keohane and Joseph S. Nye, Jr., ed. Harvard, $12.50, $4.95.
Politioal scientists, economists, historians, and sociologists look at aspects of world politics in which states are not utterly dominant, i.e., transnational relations, in essays covering, among other topics, multinational enterprise, the Ford Foundation, and racial minorities.

Uncommon Sense. James MacGregor Burns. Harper & Row, $6.95.

Washington and Other Memories. Sir Arthur Willett. Houghton-Mifflin, $6.95.

Women's Estate. Juliet Mitchell. Pantheon, $5.95.
A British leader of women's liberation looks at the condition of women throughout the world.

The Young Die Quietly: The Narcotics Problem in America. Whitney North Seymour, Jr. Morrow, $5.95.
A former New York State legislator, currently a U. S. attorney, explores the many aspects of and solutions to the drug problem for the general reader.

Your Money or Your Life. Richard Kunnes, M. D. Dodd, Mead, $5.95.
Kunnes analyzes what he feels are the problems of the American health care system, which he sees as an integral part of the economic system. His blame focuses on the "medical-industrial complex."

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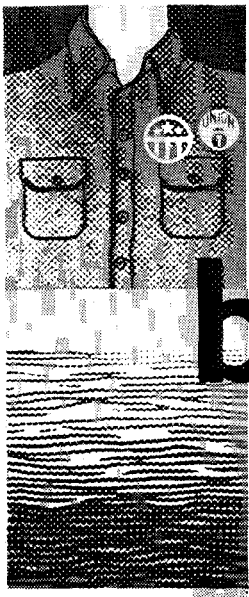

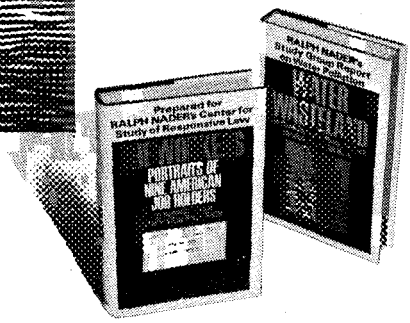

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